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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 1257

HELEN LOPO, by her Guardian Ad Litem, SYLVIA TINA LOPO,

Plaintiff and Appellant,

vs.

SAKS FIFTH AVENUE, a New York Corporation,

Defendant and Appellee.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
STATE OF CALIFORNIA,
SECOND APPELLATE DISTRICT, DIVISION TWO

JURISDICTIONAL STATEMENT

HELEN LOPO, by her Guardian Ad Litem, SYLVIA TINA LOPO

In Propria Persona for Petitioner-Appellant

16366 Royal Hills Drive
Encino, California
Phone: 213-788-2462

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No.

HELEN LOPO, by her Guardian
Ad Litem, SYLVIA TINA LOPO,

Plaintiff and Appellant,

vs.

SAKS FIFTH AVENUE, a New York
Corporation,

Defendant and Appellee.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968

No.

HELEN LUPO, by her guardian ad litem, SYLVIA TINA LOPO,

Plaintiff and Appellant,

vs.

SAKS FIFTH AVENUE, a New York corporation,

Defendant and Appellee.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION TWO

JURISDICTIONAL STATEMENT

Appellant-Plaintiff Helen Lopo, by her "Guardian ad Litem", Sylvia Tina Lopo, court appointed June 4, 1964 by James McRoberts, judge of the Superior Court of the State of California, County of Los Angeles, hereby appeals to the Supreme Court of the United States from the verdict and final judgment of the District Court of Appeal, Second Appellate District,

Division Two, of the State of California. Affirming the judgment of the Superior Court, County of Los Angeles, against Plaintiff-Appellant Helen Lopo, entered in book 5776, page 121, on November 18, 1966, in the case entitled - Helen Lopo, et al, Plaintiff v. Saks Fifth Ave., a New York corporation, et al, Defendants. - Bayard Rhone, Judge. - In which action, Plaintiff's rights under the Due Process Clause of the Fourteenth Amendment of United States Constitution were violated. Also Plaintiff's rights under Title 18, Section 241, United States Code, Chapter 13, Civil Rights, were violated.

OPINION BELOW

The Opinion of the District Court of Appeal of the State of California is annexed hereto as Appendix "A" - The petition for rehearing was denied on October 28, 1968. The Appellant's

petition for hearing in the Supreme Court of California was denied on December 4, 1968. Copies of the judgment, or remitter as to its date of entry (December 18, 1968) is annexed as Appendix "B". - Order extending time to docket appeal and file record is annexed as Appendix "C".

GROUNDS ON WHICH JURISDICTION IS INVOKED

1. The Nature of the proceeding:

Appellant was a charge account customer at Respondent's stores for approximately the past 12 years, at their Detroit, Michigan, and their Beverly Hills, California stores.

However, Appellant had accrued an amount owed on her charge account, and while shopping with her daughter as an invited guest at Respondent's store, she was seized and placed under false imprisonment, repeated demands were made

that she pay her bill, when she did not pay, the Beverly Hills Police were called. Six (6) hotly pressed demands were made that she pay up or else, when she did not pay, her purse was forcefully taken from her, she was knocked down and placed under arrest, and falsely charged with forgery (of charging to various accounts).

Appellant submits that the false imprisonment and arrest was a conspiracy; the arrest was without warrant, and Appellant was so held under imprisonment, until forced payment of the balance owed on Appellant's accrued charge account was forcefully taken from Appellant at the police station.

Therefore, is in direct violation of Title 18, Section 241, United States Code, Chapter 13, Civil Rights. - Conspiracy or concerted action, against rights of citizens.

Also, violation of Appellant's rights under Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2. The judgment or decree sought to be reviewed was entered on December 18, 1968. The Notice of Appeal to this court was filed in the District Court of Appeal, Second Appellate District, Division Two, State of California on March 10, 1969, which contained Appellant's first request for the record. - A second request for the record was filed on March 17, 1969 and denied on March 28, 1969. - On March 29, 1969 the Honorable Justice Douglas granted Appellant's motion to extend time to docket the appeal and filed the record to and including April 14, 1969.

3. The statutory provisions believed to confer on this court's jurisdiction of the appeal is 28 U.S.C. Sec. 1257 (1).

"Where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity." (Supreme Court practice, page 582, Stern & Gressman)

4. Violation of Appellant's constitutional rights, United States Code of Civil Rights, and Other Cases Believed to Sustain Jurisdiction.

a. "Conspiracy: No formal agreement between the parties is essential to the formation of a "conspiracy" for the agreement may be shown if there be concert of action. All the parties working together understandingly, with a single design for accomplishment of a common purpose." Marino v. U.S. (C.C.A. 1937) 91 F.2d 691. 113 A.L.R. 975, certorari denied 58 S.Ct. 410, 302 U.S. 764, 82 L.Ed. 593.

"A "conspiracy" is constituted by an

agreement, but is the result of the agreement and not the agreement itself. Id. The common design being the essence of the charge, it is sufficient if two or more persons in any manner, positively or tacitly, come to a mutual understanding to accomplish a common and unlawful design." U.S. v. Cassidy (D.C. 1895) 67 F. 698.

"Common design is the essence of conspiracy, and crime may be committed whether parties comprehend its entire scope, whether they act separately or together, by same or different means, known or unknown to some of them, but constantly leading to same unlawful result." People v. Hess (1961) 234 P.2d 65, 104 C.A. 2d 642. Appeal dismissed 72 S.Ct. 177, 342 U.S. 880, 96 L.Ed. 661.

b. Due Process of Law: Violation of due process clause of the Fourteenth Amend-

ment of the United States Constitution.

Also, California Rules of Court, appeal rules 40(e) (f) and 46 and 105(e) (under California law compliance with these rules are mandatory).

c. Burden of Proof: The Trial Court's failure to instruct the jury as to which set of facts of which there was evidence in the record, if any, constituted probable cause for an arrest was particularly prejudicial to interests of the Plaintiff in that the burden of proof is on the Defendant to prove justification for an arrest, when arrest without warrant is pleaded. The jury first had to make up its own mind as to what kind of evidence constituted probable cause to make an arrest, and then to determine that issue of law (properly to be determined by the court) in light of the court's instruction, above mentioned, that the burden in all

respects was on the Plaintiff. (R.T. P. 537-538) To force the Plaintiff to accume the burden of proof, was not due process of law. Therefore, is in violation of due process clause of the Fourteenth Amendment of the United States Constitution.

d. Probable Cause: When a person has been detained and that detention is not for the investigation of a offense believed to have been committed at the time, then there is no defense of probable cause available to the defendant. This point was clearly established in the case of Moffatt v. Buffums, Inc. 21 Cal. App. 2d 371.

In the instant case, it is shown beyond any doubt that Plaintiff was not being detained for investigation on any grounds that she was stealing the property of another, or of any crime suspected, but

on the contrary, was detained for the sole purpose of forcing the payment of money owed for prior purchases. Therefore, is in violation of Title 18, Section 241, United States Code, Chapter 13, Civil Rights, - conspiracy or concerted action, against rights of citizens.

Also, in violation of Due Process Clause of the Fourteenth Amendment of the United States Constitution.

THE FOLLOWING QUESTIONS ARE PRESENTED BY THIS APPEAL.

1. The violation of Appellant's Constitutional Rights, including flase imprisonment and/or conspiracy, as found in Title 18, Section 241, United States Code, Chapter 13, Civil Rights - Conspiracy, or Concerted Action, against rights of citizens.

"If two or more persons conspire to injure, oppress, threaten, or

intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same."

Also, as found in Title 7, Section 182, of the California Code, Chapter 8, Conspiracy, Crime against Public Justice:

"If two or more persons conspire falsely and maliciously to indite another for any crime, or to procure another to be charged or arrested for any crime."

2. Perjury, as found in Title 18, Section 1621, United States Code, Chapter 79:

"Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an

oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury."

See also Title 7, Section 118 of the California Code, Chapter 5:

California Rules of Court: Appendix - Division II

3 -- Constitutional Obligations

"It is the duty of all justices and judges of the courts of California to support and defend the Constitution of the United States and the Constitution of California; in so doing, they shall fearlessly observe and apply fundamental limitations and

guarantees."

Respondent's self admitted acts of giving false information to the police, to effect Appellant's arrest on a felony charge, thereby involving the police to oppress, intimidate and force payment of a debt. Also, Respondent's perjury under oath on issues of vital material facts at time of trial, are a matter of record, and cannot be denied. See (R.T.P. 395, L 25 to P. 396, L 2), (R.T.P. 405, L 17 thru L 25), (R.T.P. 419, L 21 to P. 420, L 3), (R.T.P. 464, L 2 to P. 465, L 10).

3. The Trial Court wrongfully charged Plaintiff with burden of proof at time of trial; arrest without warrant establishes a Prime Facie case and places burden of proof on arresting party. To force the Plaintiff to assume the burden of proof was not Due-Process-of-Law. Therefore is in violation of the Due

Process Clause of the Fourteenth Amendment of the United States Constitution.

4. Conduct and false charges of the Respondent before the Appeal Court, and the State Supreme Court of California -- -- Respondent knowingly and intentionally violated Appeal Rules and Due-Process-of-Law, by submitting documents to the Appeal Court without serving such copies on the Appellant.

This document made false charges of forgery that Appellant applied Attorney Ward Sullivan's name to briefs which Respondent charged were prepared by George Lopo, and false charges that Sylvia Lopo was a self-appointed attorney therefore not properly before the Court. These charges, even if true (but definately not), could not then be raised for the first time, and then to deliberately proceed to withhold notice from Appellant

until the Supreme Court made its decision, based on such false information, of which the Appellant had no knowledge, or opportunity to answer such charges. For Appellant to be falsely charged and tried without her knowledge of such charges, is not Due-Process-of-Law. Therefore is in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

STATEMENT OF THE CASE

It is indeed shocking to find that an occurance such as this could really happen. When, as an invitee of Respondent, and while shopping in Respondent's store in Beverly Hills, Respondent illegally, and unlawfully, and without reasonable or probable cause, imprisoned the Appellant, and caused her to be arrested and taken to the police station on a false charge of forgery for the purpose of collecting

money due Respondent from Appellant upon her open book, or charge account.

When Mrs. Lopo and her daughter, were grabbed by the arm and forced to go to the upstairs office of Saks, she told them that she was Mrs. Lopo and that they could verify this by her signature on the sales slips that she had just signed, and that they could compare this with her account signature (R.T.P. 224, Line 1 to Line 26). As this was a signature account, they had no charge-a-plate system. However, their reply was that her account was deliquent, they threw a check book in front of her, telling her to write a check and pay her bill. She said she couldn't as she had no checking account, but would have her husband put a check in the mail over the weekend. This did not satisfy Mr. Plotnick and he continued to demand that she pay her bill (R.T.P. 394, Line 23 to

P. 395, Line 16).

From the time that Respondent first apprehended the Appellant at its store, until her departure to the police station, the Respondent made six (6) hotly pressed specific demands on Mrs. Lopo that she pay her accrued bill.

The arrest was without issue of a warrant, from the testimony of the arresting officer, Mr. Devich, we find that when he contacted Mr. Plotnick at Saks, that they stepped out into the hall and with just the two of them present, that from his discussion, is why he placed Mrs. Lopo under arrest. (R.T.P. 464, Line 25 to P. 465, Line 4).

Now, Mrs. Lopo has been falsely imprisoned, arrested for forgery, physically assaulted, (R.T.P. 263, Line 1 to P. 264, Line 26) also (R.T.P. 396, Lines 23-26) browbeaten, and forced to pay

a debt, while so held under threat and duress. She was told to: -- Pay Saks and we will let you go -- or would you rather be locked up? -- Pay Saks or we will book, fingerprint and put you in jail. And Mrs. Lopo under these threats and duress, begged, "No, please don't do that" (R.T.P. 250, Lines 1-22).

The Respondent took Mrs. Lopo's ledger card to the police station, knowing that the lady he had under arrest was Mrs. Lopo. Now at the police station, "Prior" to the collection of the bill, the Respondent did not produce, receive, or even attempt to acquire any identification on the Appellant whatsoever. (R.T.P. 419, Lines 1-7)

But Respondent did demand and force collection of the bill at the police station and gave the lady a receipt made out to Mrs. Lopo, thereby acknowledging

her to be Mrs. Lopo. It should also be noted that Mrs. Lopo did not have possession of her purse, for it was only when Respondent handed her a receipt for the sum of $574.93, that they gave her the purse.

The District Court in its written Opinion ruled solely on the question of probable cause, and ignored all other issues.

Plaintiff's contention is that the Court erred in its instruction to the jury. The instruction permitted the jury to determine if Saks was legally justified in its action. Probable cause is a question of law for the Court.

SUBSTANTIALITY OF FEDERAL QUESTIONS

The questions raised in this case are without doubt the most vital Due Process, and Civil Rights issues encompassed in the United States Constitution. They reach

the very core of our lives as free people. They, by constitutional guarantees, abolish imprisonment to force payment of a private debt.

For if this procedure to force collection of a debt is condoned, it means that any person in the United States, who becomes a debtor, is subject to seizure and imprisonment and physical assault to force payment of such debt.

I do not believe that this Court can sanction the procedure under which a person is seized, held and forced to buy his freedom.

The right of a creditor to collect for an outstanding account is governed by rules of Civil Law and does not, under any stretch of the imagination, justify the arrest and imprisonment of a person to accomplish that end.

I believe that the discussion above,

demonstrates that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral arguments, for their resolution.

Respectfully submitted,

HELEN LOPO, by her
Guardian ad Litem,
Sylvia Tina Lopo

In Propria Persona for
Petitioner-Appellant.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

HELEN LOPO, by her Guardian ad Litem, SYLVIA TINA LOPO, Plaintiff and Appellant, vs. SAKS FIFTH AVENUE, a New York corporation, Defendant and Respondent.	Civil No. 31906 Court of Appeal-Second Dist. F I L E D Oct. 10, 1968 Clay Robbins, Jr. Clerk Deputy Clerk

APPEAL from judgment of the Superior Court of Los Angeles County. Bayard Rhone, Judge. Affirmed.

S. Ward Sullivan for Appellant.

Bolton, Groff & Dunne and Robert E. Dunne, Edward L. Lascher for Respondent

A jury found for respondent in this action for charges for false imprisonment. By her guardian ad litem, plaintiff Helen Lopo appeals the verdict and judgment.

In 1958, Mrs. Lopo lived at 10587 Wilshire Boulevard. On 22 February of that year, she opened a charge account at the Saks store in Beverly Hills. The account was in her name.

About a year later, Mrs. Lopo returned to Michigan, her native state, for three or four months. When she returned, she and her family lived briefly in Hollywood, then moved to Encino where they lived up to the time of the trial. Mrs. Lopo rented a post office box during this period and there is evidence in the record that she received mail, including Saks bills, sent to her former address through the post office box. Apparently she never notified Saks of her change of address.

By 19 December 1959, the Saks account was in arrears for over $500. Saks had received no payments on the account since the previous May and had turned the account over to a collection agency. There is evidence that some bills had been returned undelivered to Saks.

On 19 December 1959, Mrs. Lopo and her daughter Starlie went to Saks and made several purchases. (Starlie and Tria also had charge privileges on the account,

but Mrs. Lopo made all the purchases on the date in question.) Mrs. Lopo charged the purchases to her account, signing her name and the Wilshire address at the botton of the Saks slips.

At about 5 p.m., the store manager, Mr. Mathews, was on the store's fourth floor. He was paged by phone and told that Mrs. Cook, another employee, wanted to talk to him on the fourth floor. Mrs. Cook, "handled the collection problems."

After taking the phone call, Mathews noticed a heavy set woman, who proved to be Mrs. Lopo, moving towards a closed bank of elevators. He thought this conduct was unusual and asked if he could be of assistance. The woman said nothing. By then Mrs. Cook had arrived, and she showed Mathews the record of the Lopo account, and pointed out Mrs. Lopo. Mathews approached appellant, and, according to him, advised her something appeared to be wrong with her account and asked "Would you go upstairs to the office where we have the records and let's see if we can't straighten this matter out." He then took Mrs. Lopo by the elbow and led her to the elevator. (Starlie Lopo testified that Mrs. Cook "grabbed" her mother, and that Mathews "had me by the arm.")

Mrs. Lopo, her daughter, Mathews, and Mrs. Cook entered the controller's office on the sixth floor.

Mathews told Mrs. Lopo, who sat in a chair in front of the controller's desk, that he would like identification. He asked Mrs. Lopo if she was Mrs. Lopo. Told that she was, he asked for her address. She said he had the address on the record card; a brief argument followed. Mathews called the Wilshire address and was told the Lopos no longer lived there.

At this point, Mr. Plotnick, Saks' controller, arrived in his office. Mathews told him about the account, and that Mrs. Lopo would not identify herself. Mathews then left the office. In response to Plotnick's inquiries, Mrs. Lopo said her husband would pay the bill and gave two addresses in Detroit where he could be reached. Long distance information disclosed that the addresses were fictitious. During this interrogation, Starlie Lopo kept advising her mother, "'You don't have to answer that.'" Finally, Plotnick made her leave his office. He asked her mother several times to sign a counter check for the amount of the bill, but she refused, saying she did not have a checking account. At some point, Plotnick and Mathews conferred, and decided to call the police.

Eventually, two Beverly Hills police officers arrived. They asked Mrs. Lopo for identification. She would not produce any, whereupon one of the officers emptied her

purse onto the desk. Among its contents were two large envelopes, each of which contained about $10,000 in $100 bills. At this, the police said she had better come to the station to be identified. The Lopos, the officers and Plotnick, went to the station in police cars. After some discussion with the officers, Mrs. Lopo gave Plotnick $600; he gave her change and a receipt and departed. Mrs. Lopo, who was not charged with any offense, or formally arrested, was allowed to depart when her husband arrived with her Michigan driver's license.

At the time of trial, Mrs. Lopo was unable to testify coherently. (Medical witness for her testified that psychiatric disorders from which she suffered were induced by the events of 19 December.) Starlie Lopo's account of the events attributed force and rudeness to the Saks personnel and the Beverly Hills police.

Plaintiff's principal contention is that the court erred in its instruction to the jury. Specifically, the contention is that the instruction permitted the jury to determine if Saks was legally justified in its action.

A storekeeper has a right to detain a person whom he reasonably believes is stealing from him, for a reasonable time, to investigate in a reasonable manner. (Collyer v. S. H. Kress & Co., 5 Cal.2d 175, 180-181.)

Whether the storekeeper has the necessary

reasonable grounds to bring this privilege into play is a question of law for the court. (Id.)

In this case, the relevant instruction read:

"A person or corporation, may in the protection of his or its property, detain another for investigation with reference to a taking of his or its property. In an action for damages for false imprisonment, probable cause is a defense . . ."

Plaintiff argues that "where, as here, the evidence was in conflict, it was the duty of the court to instruct the jury as to what facts, if established, would constitute probable cause, and why the question as to the existence of such facts should have been submitted to them." (Aitken v. White, 93 Cal.App.2d 134, 141.)

At the trial plaintiff did not propose any such instructions, and she raised the point for the first time in her motion for new trial in which she argued that the failure of the court to give such instructions on its own motion was reversible error. We think the lack of elaboration in the instructions on probable cause was something of which plaintiff had no cause to complain. Having submitted the case to the jury on a general set of instructions, plaintiff cannot now complain that she might have done better under some other as yet unspecified set of

instructions. Indeed we think that the failure of the court to marshal the facts on probable cause in its instructions operated to plaintiff's advantage, for the evidence on probable cause did not generally favor plaintiff's position. This evidence was summarized in respondent's brief as follows: "A charge account has been delinquent for about half a year, with occasional outbursts of major buying thereon; all attempts to communicate with the supposed patron have failed and she appears to have flown the proverbial coop; nevertheless, there is a sudden outburst of charging on the account, employing an unarguably invalid address six times and, when the person doing the charging is approached, she appears to be an unkempt individual who first tries to run, then refuses to give her identity, and when asked if she is a specific person claims that she is but cannot substantiate her supposed identity -- and even claims to be unaware of her own telephone number; she further exacerbates the situation by giving bogus firm names for her husband in another city and, to cap it off, she is accompanied by a "guardhouse lawyer" who busily interjects warnings against supplying any information."

On the evidence presented there were substantial grounds on which the jury could have found probable cause, and the inadequacy of the instructions on probable cause

would only have become significant if the jury had returned a verdict in favor of plaintiff. (Aitken v. White, 93 Cal. App.2d 134; White v. Martin, 215 Cal.App.2d 641; Gibson v. J. C. Penney Co., Inc., 165 Cal.App.2d 640.)

Plaintiff's other contentions are without merit and require no discussion.

The judgment is affirmed.

FLEMING, J.

We concur:

ROTH, P. J.

NUTTER, J. Pro Tem*

THE COURT: This opinion is not for publication pursuant to the provisions of Rule 976, California Rules of Court.

* Assigned by Chairman of the Judicial Council.

TCJS10—6/63

ATTORNEY FOR

ADDRESS

TELEPHONE

CLERK

Nov 18 '66 5776 121

FILED

Dated NOV 16, 1966

WILLIAM G. SHARP, County Clerk

BY DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HELEN LOPO, by her Guardian ad Litem, Sylvia Tina Lopo
Plaintiff,

vs.

SAKS FIFTH AVENUE, a New York Corporation
Defendant.

No. 748 299

JUDGMENT ON VERDICT IN OPEN COURT

JUDGMENT IS AFFIRMED BY DISTRICT COURT OF APPEAL
REMITTITUR FILED 12-18-68
WILLIAM G. SHARP, COUNTY CLERK
ATTEST:
By B. Campbell Deputy
12/20/68

This action came on regularly for trial on the 9th day of November, 19 66; the plaintiff appearing by attorney PAUL CARUSO and the defendant appearing by attorney ROBERT E. DUNNE, of Bolton, Groff & Dunne.

A jury of 12 persons was regularly impaneled and sworn to try the action. Witnesses on the part of the plaintiff and the defendant were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the Court, the jury retired to consider of their verdict, and subsequently returned into Court, and being called answered to their names and duly rendered their verdict in writing in words and figures as follows, to-wit:

"TITLE OF COURT AND CAUSE" We, the jury in the above entitled action, find for the defendant, Saks Fifth Avenue, and against the plaintiff, Helen Lopo.

This 16th day of November, 1966. Maurice E. Coffey, Foreman."

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged, and decreed that said plaintiff take nothing by reaonn of her complaint herein, and that said defendant have and recover from said plaintiff, its

~~have and recover from said~~

~~with interest thereon at the rate of seven per cent per annum from the date of the verdict until paid, together with~~ costs and disbursements amounting to the sum of $1,861.96

JUDGMENT ON VERDICT IN OPEN COURT

FILED

DEC 18 1968

WILLIAM G. SHARP, County Clerk

by [illegible] DEPUTY

IN THE

Court of Appeal, Second Appellate District
State of California

ENTERED DEC 20 1968
BOOK 5776 PAGE 127
BY [illegible] DEPUTY

HELEN LOPO, ETC.,

Plaintiff and Appellant,

vs.

SAKS FIFTH AVENUE, ETC.,

Defendant and Respondent.

No. 31906

S. C. No. C 748299

REMITTITUR

ON APPEAL FROM THE SUPERIOR COURT IN AND FOR THE COUNTY OF LOS ANGELES

The above-entitled cause having been fully argued, submitted and taken under advisement,

IT IS ORDERED, ADJUDGED AND DECREED *by the Court that* the judgment is affirmed.

Respondent to recover costs on appeal.

HELEN LOPO, etc vs SAKS FIFTH AVENUE

STATE OF CALIFORNIA, County of Los Angeles

No. C 748299

I, WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court for the county and state aforesaid, do hereby certify the foregoing to be a correct copy of the original Judgment on Verdict in open court filed November 16, 1966; Remittitur filed December 18, 1968,

on file and of record in my office, and that I have carefully compared the same with the original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Superior Court.

Dated: March 28, 1969

WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California for the County of Los Angeles

By [illegible], Deputy

FILED

DEC 18 1968

[illegible] Clerk

By [illegible] DEPUTY

IN THE

Court of Appeal, Second Appellate District
State of California

ENTERED DEC 20 1968
BOOK 5776 PAGE 127
BY [illegible] DEPUTY

HELEN LOPO, ETC.,

Plaintiff and Appellant,

vs.

SAKS FIFTH AVENUE, ETC.,

Defendant and Respondent.

No. 31906

S. C. No. C 748299

REMITTITUR

ON APPEAL FROM THE SUPERIOR COURT IN AND FOR THE COUNTY OF LOS ANGELES

The above-entitled cause having been fully argued, submitted and taken under advisement,

IT IS ORDERED, ADJUDGED AND DECREED *by the Court that* the judgment is affirmed.

Respondent to recover costs on appeal.

I, CLAY ROBBINS, JR., Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the foregoing is a true copy of an original judgment entered on October 10, 1968 *, and now remaining of record in my office.*

Dated: December 10, 1968.

CLAY ROBBINS, JR., *Clerk*

By [signature]
Deputy

Supreme Court of the United States

No. ---------- , *October Term, 19* 68

HELEN LOPO, BY HER GUARDIAN AD LITEM,
SYLVIA TINA LOPO,

Appellant,

vs.

SAKS FIFTH AVENUE

O R D E R

UPON CONSIDERATION of the application of the appellant,

IT IS ORDERED that the time for docketing an appeal and filing the record in the above-captioned case be, and the same is hereby, extended to and including April 14, 1969, without prejudice to the Court's consideration as to whether or not the application was timely received.

/s/ W. O. Douglas
Associate Justice of the Supreme
Court of the United States

Dated this 29th
day of March, 1969.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, say:

I am and was at all times herein mentioned a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that my business address is 608 South Hill Street, Los Angeles, California 90014.

That on April 11, 1969, I served the within JURISDICTIONAL STATEMENT, upon the DEFENDANT in said cause, by depositing one copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, in a mail box regularly maintained by the Government of the United States at Los Angeles, California, addressed to the attorneys of record for said Defendant at their office addresses as follows:

Bolton, Groff & Dunne
210 West 7th Street
Los Angeles, Calif.

Edward L. Lascher
2497 Harbor Blvd.
Ventura, Calif.

Honorable Bayard Rhone,
Judge
Superior Court
Los Angeles County
110 N. Hill Street
Los Angeles, Calif.

Clerk of District
Court of Appeal
Second Appellate
District
Division Two
217 West 1st Street
Los Angeles, Calif.

United States Supreme Court
Office of Clerk
1 First Street North East
Washington, D.C.

Clerk of California Supreme Court
4250 State Building
San Francisco, California

Executed on April 11, 1969, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

_____

SUPREME COURT, U. S.

FILED

MAY 12 1969

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE

UNITED STATES

October Term 1968

No. 1257

HELEN LOPO, by her Guardian Ad Litem, SYLVIA TINA LOPO,

Plaintiff and Appellant,

vs.

SAKS FIFTH AVENUE, a New York Corporation,

Defendant and Appellee.

MOTION TO DISMISS

APPEAL FROM
COURT OF APPEAL OF THE
STATE OF CALIFORNIA

ROBERT E. DUNNE
210 West Seventh St.
Los Angeles, Calif.

Attorney for Appellee

Of Counsel:

EDWARD L. LASCHER
2497 Harbor Boulevard
Ventura, California

IN THE

SUPREME COURT OF THE

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2497 Harbor Boulevard
Ventura, California

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SAKS FIFTH AVENUE,
a New York Corporation,

Defendant and Appellee.

MOTION TO DISMISS

Appellee Saks Fifth Avenue moves the Court to dismiss the appeal on the following grounds:

1. The appeal was not taken in time, and therefore, not being taken in conformity to statute or the rules, is not within the jurisdiction of this Court;

2. The appeal has not been diligently prosecuted;

3. There is no substantial federal question presented; and

4. The judgment rests on adequate non-federal bases.

These are discussed individually in the same order.

NATURE OF THE CASE

This is a common law tort action seeking damages for alleged false imprisonment of a person by a storekeeper. It was tried in a state court before a jury which unanimously found for the appellee-defendant. The judgment entered on the jury's verdict was affirmed on appeal to the California Court of Appeal and the California Supreme Court denied appellant's petition for further review.

Appellant has docketed an appeal.

I

THE APPEAL IS UNTIMELY

The record filed with this Court discloses that on December 4, 1968, the Supreme Court of California (which is the highest court of the

state in which a decision could be had) entered its order denying appellant's petition for hearing by that court.

The controlling statute 1/ sets 90 days as the time in which appeal must be taken or a petition for certiorari filed, following the entry of the state-court judgment (at least in the absence of extension of time, which was not granted here). March 4, 1969 was the 90th day following the entry of the last California order. The notice of appeal was filed March 10, 1969.

Appendix B to the Jurisdictional Statement is the remittitur issued by the California Court of Appeal, Second Appellate District, notifying the trial court of the finality of the appellate judgment. Under California practice it is nothing more than that: A form for giving formal notification of appellate action. The assertion in the Jurisdictional Statement that the "judgment or remitter [sic]" was rendered December 18 is, therefore, inaccurate. The

---

1/ "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within 90 days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding 60 days."

28 U.S.C. §2101(c).

actual record on appeal discloses the denial of hearing by the California Supreme Court by order made on December 4, 1968.

It has long been settled that the existence of a latent power to grant a hearing or rehearing by sua sponte action of a state court does not defer the running of the statutory time for appeal to this Court. Under the specific California appellate scheme, the time for invoking this Court's jurisdiction commences to run with the denial by the California Supreme Court of a petition for hearing by that court.

> Market Street Railway Co. v. Railroad Commission, 34 U.S. 548, 551-2, 89 L. Ed. 177, 65 S. Ct. 770 (1945).

Therefore, the appeal was timely and subject to dismissal on that ground.

> Pittsburgh Towing Co. v. Mississippi Valley Barge Line Co., 385 U.S. 32, 32-33, 17 L. Ed. 2d 31, 87 S. Ct. 195 (1966);
>
> Territo v. United States, 358 U.S. 279, 3 L. Ed. 2d 298, 79 S. Ct. 312 (1959);
>
> Ashton Power Wrecker Equipment Company v. Michigan, 344 U.S. 870, 97 L. Ed. 674, 73 S. Ct. 167 (1952).

II.

THE APPEAL SHOULD BE DISMISSED FOR LACK OF PROSECUTION

Under revised Rule 13(1), appellant was required to docket the case not later than March 4, 1969, the 90th day, unless the time for docketing had been extended; applications for extension are not favored. As of the 90th day, the appeal had not been docketed nor had any extension been sought or granted.

The record shows that on March 24, the 110th day, appellee moved in the court possessed of the record (the Court of Appeal of the State of California, Second Appellate District) for an order dismissing the appeal, pursuant to revised Rule 14(2).

Under California practice, a motion of that type is deemed made as of the time written notice of intent to so move is given to the adverse party, but the court may not act thereon until the date specified in the written notice, at which time the motion is presented to the court in open session.

California Code of Civil Procedure, §1005.5.

The first calendar date of the state court was April 10. At that time, Mr. Justice Douglas having extended time for docketing until

April 14, the state court continued the motion to dismiss. The case was docketed in this Court on April 14.

The fact remains, however, that 110 days had passed as of the time the motion was made in the court below. Furthermore, the order of Mr. Justice Douglas was expressly made "without prejudice to the Court's consideration as to whether or not the application was timely received." [Order of March 29, 1969].

Since the application to extend was not even presented to this Court or a Justice of this Court prior to the expiration of the time allowed therefor, it was not timely.

Rule 34(2).

Therefore, the motion is renewed on the ground of nonprosecution in this Court, the state court properly deeming itself prevented from passing on nonprosecution once the appeal is docketed with this Court. Whether or not the 20-day delinquency would provide an independent ground for dismissal, it certainly provides an additional ground under all of the facts of this case.

III

THERE IS NEITHER JURISDICTION NOR A SUBSTANTIAL FEDERAL QUESTION

A. THE EXPRESS JURISDICTIONAL PREMISE, STATE-COURT INVALIDATION OF FEDERAL LAW, IS NOT INVOLVED IN ANY WAY

Appellant seeks to invoke this Court's appellate jurisdiction [Jurisdictional Statement, pages 5-6] exclusively on the ground that the case draws into question the validity of a treaty or statute of the United States, with the decision below against the validity thereof.

28 U.S.C. §1257(1).

No statute or treaty of the United States is specified, nor did the action draw into question any. Much less did the California Court of Appeal invalidate any treaty or Act of Congress.

The state-court opinion below is a rather pedestrian disposition of a common law tort action primarily on the facts and state procedural niceties. It does not say a single word about any Act of Congress; a fortiori, it does not invalidate any.

As a matter of fact, the appellant's opening

brief in the state court does not even mention any treaty or Act of Congress. The only statute mentioned in appellant's opening brief [page 46] was a then-repealed California enactment allowing one party to examine an adverse party as though on cross examination.

Former California Code of Civil Procedure §2055.

Appellee's brief in the state court did not rely upon or discuss any federal enactments. Appellant's reply brief in the California court mentioned one additional California statute (also then repealed), 2/ and made no mention of any matter of federal law.

The first reference to federal law appeared in appellant's petition for rehearing in the state court, in which [pages 31-33] she claimed that she had been deprived of the right to be protected against unlawful search and seizure, the guarantee of trial by jury and due process in a federal prosecution and the right to counsel and compulsory process in a federal prosecution.

United States Constitution, Amendments, Amendments IV, V and VI.

That petition for rehearing was denied.

2/ Former California Code of Civil Procedure §1880, dealing with testimonial capacity of witnesses.

The California court did not decide against the validity of the Fourth, Fifth or Sixth Amendments.

Appellant's petition for hearing by the California Supreme Court mentioned only the same portions of the Bill of Rights. In denying a hearing, that court refrained from taking any action concerning the Amendments.

In the jurisdictional statement [page 4], appellant makes the bald statement that something violates a specified Act of Congress: 18 U.S.C. §241. The validity of that statute remains completely unimpeached by any act of the state court. There is no basis for this Court's exercise of jurisdiction on the ground stated.

> Ivanhoe Irrigation District v. McCracken, 357 U.S. 275, 290, 2 L. Ed. 2d 1313, 78 S. Ct. 1174 (1958);
>
> Flournoy v. Wiener, 321 U.S. 253, 262, 88 L. Ed. 708, 64 S. Ct. 548 (1944).

B. THERE IS NO OTHER JURISDICTIONAL BASIS PRESENTED IN THE RECORD

Moreover, even if the Court were to look beyond the specific basis of jurisdiction urged

by appellant, it would still be manifest that no substantial federal question was timely raised in the state courts. In fact, there is no federal question of any kind which has ever been raised.

This was a civil action sounding in the common law tort of false imprisonment, based upon appellee's detention of appellant for a few minutes in a store to investigate suspicious circumstances and activities of appellant, which brief detention was terminated by the arrival of police officers who took over the matter in its entirety. Appellant's contentions in the state appellate courts were three-fold:

1. An allegedly erroneous instruction given at appellant's own request concerning the burden of proof on certain issues under state law [Opening Brief, pages 27-34];

2. Alleged error in appellee's questioning of one of appellant's witnesses as to when the witness had recovered her mental competence, the witness having been found incompetent in a previous trial of this same case [Opening Brief, pages 44-53];

3. Purported prejudicial misconduct of the state trial judge consisting of his utterance of the following sentence concerning one of appellee's employees who testified: "Well, he is a gracious fellow." This was said in response to a jesting remark by appellant's own counsel [Opening Brief, pages 54-65].

As to the first point, the state appellate court held that the instruction given on probable cause to detain a suspect was accurate, insofar as it went, under California law; that the failure of the trial court to elaborate on the instruction could not be the subject of appellate complaint when no amplifying instructions had been requested during the trial; and that the generality of the charge actually benefited appellant and she was therefore barred from complaining of an error favorable to herself [Opinion, pages 5-8]. The other two contentions were held, under California law, to be totally devoid of merit [Opinion, page 8].

Appellee submits that the statement of these contentions is sufficient to refute appellant's contention that they are "without doubt the most vital Due Process, and Civil Rights issues encompassed in the United States Constitution" [Jurisdictional Statement, page 19]. The more accurate characterization is set forth later in the statement where appellant candidly admits that the issues in this case are strictly ones "governed by rules of civil law" [Jurisdictional Statement, page 20], and therefore matters of state practice. They are anything but constitutional in scope.

The record discloses that this case was tried twice. Two successive juries failed to accept appellant's version of the facts, although the adverse version of one was vacated by a California trial court on the ground of procedural error. The purely factual questions were resolved by those two juries and the state

law questions were resolved by the state courts. The thrust of the jurisdictional statement is that appellant's version should have been believed and she should have won. That is no basis for invoking this Court's jurisdiction.

IV

THE JUDGMENT RESTS ON ADEQUATE NON-FEDERAL GROUNDS

As discussed above, the questions presented are strictly ones of California tort law. Application of that law is the function of the California courts.

Moreover, the invited-error and estoppel-to-assert-error aspects of the decision below are abundant to support the affirmance of the trial court judgment. It is bromidic to state that where such is the case there is no basis for invoking this Court's appellate jurisdiction.

V

UNDER RULES 5 AND 39 THE APPELLATE PAPERS, FILED BY A NON-LAWYER ON BEHALF OF ANOTHER PERSON, SHOULD BE STRICKEN AS IMPROVIDENTLY FILED

Appellee also questions whether the documents lodged with this Court are validly filed. The rules require that any filing in this Court be accomplished in the name of a member of the bar of this Court.

Rule 39(2);

Cf., Rule 5.

Sylvia Tina Lopo is not a member of the bar of this Court -- or any other bar, for that matter. She is a non-lawyer purporting to represent her mother. The record discloses that her self-denomination as being in pro se ("pro per") is a misstatement. The appellant is Helen Lopo, not Sylvia Tina Lopo, and therefore the only person who could prosecute this appeal pro se would be Helen Lopo. Not another non-lawyer, even one related to her.

The fact that Miss Lopo was appointed guardian ad litem for her mother is immaterial. Under state law that appointment does not empower the guardian ad litem to proceed pro se in a representative capacity.

City of Downey v. Johnson,
263 A. C. A. 896, 899-900,
69 Cal. Rptr. 830, 833-834
(1968). 3/

Moreover, it would be somewhat anomalous to conclude that appointment of Miss Lopo by the California nisi prius court had the effect of admitting her to the bar of this Court pro hac vice. This irony is merely multiplied when one realizes that many attorneys throughout the country, although fully possessed of qualifications to practice before this Court, are barred from acting for their clients because of lack of admission before this Court. It is difficult to rationalize a contrasting rule in which persons with neither professional training nor professional responsibility may arrogate to themselves the right of self-appointment to act as attorney for others.

Appellee is not suggesting any technicality-type denial of the important right to represent oneself. Appellee does suggest that any extension of that right into the arena of one lay-man's representing another should be accomplished, if at all, only carefully and

---

3/ The holding on that issue in the case cited was one of first impression in California. In the course of decision, however, the California court examined the other jurisdictions which have passed on the question, finding them entirely in accord.

diligently and under control, and not by unilateral act of the would-be "pro se lawyer".

For this additional reason the appeal should be dismissed.

CONCLUSION

For the foregoing reasons the appeal should be dismissed. Since each of these defects applies equally to review by certiorari, certiorari should also be denied.

Respectfully submitted,

ROBERT E. DUNNE

Attorney for Appellee

Of Counsel:

EDWARD L. LASCHER

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 24 1969
JOHN F. DAVIS, CLERK

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vs.

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Corporation,

Defendant and Appellee.

SUPPLEMENT TO JURISDICTIONAL STATEMENT AND REPLY TO APPELLEE'S MOTION TO DISMISS

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO

HELEN LOPO, by her Guardian
Ad Litem, SYLVIA TINA LOPO
In Propria Persona

16366 Royal Hills Drive
Encino, California

In Propria Persona for
Plaintiff-Appellant

IN THE
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MOTION TO DISMISS

Appellant Helen Lopo, by and through her "Guardian Ad Litem," Sylvia Tina Lopo, hereby supplements the Jurisdictional Statement with additional cited cases and makes reply to Appellee's Motion to Dismiss.

OPINION BELOW

Appellant's Jurisdictional Statement, and Record was filed and the appeal docketed on April 14, 1969. - The Opinion of the District Court of Appeal of the State of California was annexed as Appendix "A". - The Petition for Rehearing was denied on October 28, 1968. - Appellant's Petition for Hearing in the Supreme Court

of California was denied on December 4, 1968. - Copy of the Judgment, or Remittitur as to its date of entry (December 10, 1968) was annexed as Appendix "B". - Order Extending Time to Docket Appeal and File Record was annexed as Appendix "C". - Certificate from the Supreme Court of California, Dated 5, March, 1969, was annexed as Appendix "D". - District Court of Appeal's Docket Entry Sheet is annexed hereto as Appendix "E".

THE NOTICE OF APPEAL WAS TIMELY FILED

Appendix "B" to the Jurisdictional Statement is comprised of three pages; all are stamped with the filing date of December 18, 1968. - Page three states: "***It is Ordered, Adjudged and Decreed by the Court that the judgment is affirmed.*** ***I Clay Robbins, Jr. Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the foregoing is a true copy of an original judgment entered on October IO, 1968, and now remaining of record in my office.

Dated: December 10, 1968.

Clay Robbins Jr., Clerk
By J. Kavanagh
Deputy"

The foregoing Judgment, or Remittitur, is the Final Decree and the last California Order.

This is also substantiated by Appendix

"D", Certificate from the Supreme Court of California, dated 5 March, 1969, which states: - "The record in the above case discloses that the judgment of the Court of Appeal, was final on December 10, 1968, and on that date the remittitur was issued to the county clerk."

THE CONTROLLING STATUTE

"Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court shall be taken or applied for within 90 days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding 60 days."

28 U.S.C. § 2101(c)

Therefore, March 10, 1969, was the 90th day after the issuance, or entry, of such judgment or decree.

"In determining what is a 'final judgment' or 'decree' within section of the Judicial Code vesting the Supreme Court with appellate jurisdiction from final judgment or decrees in state courts, the Supreme Court is not controlled by designation applied to it in state practice."

Jud. Code § 237, 28 U.S.C.A. § 344.

"Where a state statute provides that the decision of the Supreme Court of the state shall be final, but that judgment shall issue thereon, the issuance of the judgment, and not the filing of the decision, fixes the date within three months from which steps must be taken under the act of September 6, 1916, for review in the Supreme Court of the United States."

Puget Sound Power and Light Company v. County of King, 44 S.Ct. 261, 264 U.S. 22, 68 L.Ed. 541.

Cole V. Violette, 319 U.S. 581, 63 S.Ct. 1204, 87 L.Ed. 1600.

"An opinion of former Circuit Court of Appeals for Second Circuit was merely an 'opinion' rather than a 'judgment' though it gave dates of argument and decision and stated that order was reversed, and subsequent 'order for mandate' was the 'judgment' from whose date time of filing petition for certiorari should be computed."

Commissioner of Internal Revenue v. Estate of Edward T. Bedford et al, 65 S.Ct. 1157, 325 U.S. 283, 89 L.Ed. 1161.

Therefore, the Notice of Appeal was timely filed on March 10, 1969.

A. DOCKET ENTRIES ARE VOID OF ENTRY-DATES

It is a well-established rule that counsel or a party consulting the docket should not be required to search the record "as to the nature and effect of what has been done, or as to the timeliness of future proceedings." Any entry void of its date of entry shall be construed as non-existent and void, when pertaining "to the nature and effect of what has been done or as to the timeliness of further proceedings." No where on the Docket Record of the District Court of Appeal can the date of December 4, 1968, be found, and therefore, is non-existent.

Appellant would like to call the Court's attention to the District Court of Appeal's Entries (a copy of which is contained in the Appendix herein) designating the Denial of Hearing, which is ambiguous on its face so that a party consulting the docket has "a reasonable basis for doubt, as to the nature and effect of what has been done and as to the timeliness of further proceedings."

The District Court of Appeal's own Docket Entries allow the Denial of Hearing no basis for time computation.

"Since the running of time for motions after judgment and for appeal begins from the entry of judgment, such entry, though not necessarily in any particular forms of words, should be unambiguous on its face so that counsel or a party consulting the docket will have no reasonable basis for

doubt as to the nature and effect of what has been done or as to the timeliness of further proceedings."

Danzig v. Virgin Isle Hotel, (CA 3d, 1960) 278 F2d 580, 582.

B. APPEAL IS PROPERLY PROSECUTED

The appeal was timely docketed by Appellant on April 14, 1969, following the Order of Mr. Justice Douglas extending the time for docketing the appeal and filing the record to and including April 14, 1969.

Appellee's "Motion To Dismiss Appeal To Supreme Court", pursuant to Rule 14(2) was filed on March 25, 1969, in the California Court with the expressed knowledge, as stated in Appellee's said motion, of Appellant's then-pending "Motion To Extend Time To File Record and Docket Appeal."

According to Rule 14, said Motion is to be presented to the court possessed of the Record (the Court of Appeal of the State of California, Second Appellate District) prior to the docketing of the Appeal. Once the Appeal has been docketed by the Appellant, Rule 14 does not provide for the Appellee's said Motion. Furthermore, 14(2) does not provide for Appellee to renew said Motion once Appeal is docketed in this Court.

Appellant has properly prosecuted her Appeal by timely filing her Notice of

Appeal, on March 10, 1969, the earliest date upon which it was possible for Appellant to file (as Appellant did not learn of the Entry of Judgment until late in the afternoon of Friday, March 7, 1969). In said Notice of Appeal, Appellant designated the record for certification and transmittal to the United States Supreme Court.

On March 17, 1969, Appellant inquired as to whether the Record was ready for transmittal to this Court; Appellant was informed that her Notice of Appeal was filed that day bearing the March 10, 1969, Receiving Date, and the Clerk of the District Court of Appeal requested a second Designation of Record. Appellant renewed said Designation that day, March 17, 1969, by filing a second Request for Records; said request was denied on March 28, 1969. Appellant was persistent and after much reluctancy, the Clerk in the California Court of Appeal certified the Record for transmittal to this Court which received and filed Appellant's Record on April 14, 1969.

Appellant has timely docketed her Appeal to this Court.

The California Court of Appeal (at the request of the Appellee) placed Appellee's said Motion off-calendar.

Appellant's "Motion To Extend Time To File Record and Docket Appeal" correctly stated the Judgment Entry of December 10, 1968.

The Final Decree and last California Order (dated December 10, 1968) was filed

on December 18, 1968, which states: "It is Ordered, Adjudged and Decreed by the Court that the Judgment is affirmed***."

The Certificate of the Supreme Court of California, dated March 5, 1969, states: "The record in the above case discloses that the Judgment of the Court of Appeal was final on December 10, 1968, and on that date the Remittitur was issued to the County Clerk."

Therefore, Appellant respectfully submits that she filed a timely Notice of Appeal, and pursuant to the Order of Mr. Justice Douglas, Appellant further submits that she has timely docketed her Appeal.

(Cases Cited)

"This appeal was docketed 22 days after expiration of the *** period provided by the Rule. During that period, appellant made no application for an enlargement of time, *** nor did any explanation accompany the untimely docketing of the appeal. The jurisdictional statement itself is silent on the subject. *** Appellant's counsel, upon reporting the misunderstanding to a member of this Court, could have unquestionably have obtained an enlargement of the time to docket the case extending even beyond the 22 days within which the record was actually filed."

Pittsburgh Towing Company v. Mississippi Valley Barge Line Company et al, 87 S.Ct. 195 (1966), 385 U.S. 32, 17 L.Ed. 2d 31.

Appellant cites the above case, and submits that she did properly conform to all acts that the Court said should have been done.

Therefore, Appellant "unquestionably obtained an enlargement of time to docket the case."

Appeal was not docketed until "after the time provided in Rule 13(1) expired. This defect, however is not jurisdictional. - Id."

Johnson v. Florida, 88 S.Ct. 1713 (1968) at 1714.

"Fact that appeal, notice of which was timely filed, was not docketed until 56 days after time provided by court rule had expired did not constitute jurisdictional defect. Supreme Court Rules, Rules 11, subd. 1, 13, subd. 1, 28 U.S.C.A."

Johnson v. Florida, 88 S.Ct. 1713 (1968), 391 U.S. 596

There are no grounds for Appellee's Motion to Dismiss the Appeal for Lack of Prosecution. Appellee's request to renew said motion on the ground of non-prosecution in this Court is without foundation.

GROUNDS ON WHICH JURISDICTION IS INVOKED

I

THE NATURE OF THE PROCEEDING

Appellant, Helen Lopo was a charge account customer at Appellee's stores for approximately the past 12 years, at their Detroit, Michigan, and their Beverly Hills, California stores.

However, Appellant had accrued an amount owed on her charge account, and while shopping with her daughter, Dolores, as invited guests at Appellee's Beverly Hills store, where both were authorized to sign for purchases, Appellant and her daughter were seized and placed under false imprisonment; repeated demands were made that Appellant pay her accrued bill, when she did not pay, the Beverly Hills Police were called. Six (6) hotly pressed demands were made that she pay up or else; when she did not pay, her purse was forcefully taken from her; she was knocked down and placed under arrest, and falsely charged with forgery, of charging to various accounts.

Appellant submits that the false imprisonment and arrest was a conspiracy; the arrest was without issue of warrant, and from testimony of the arresting officer, Mr. Devich, we find that when he contacted Mr. Plotnick at Saks, that they stepped out into the hall and with just the two of them present, Mr. Plotnick told him that "Mrs. Lopo had signed her name to

various charge accounts on that date". So on this "information"--is the reason that he placed Mrs. Lopo under arrest for forgery (R.T., Page 464, line 1 to Page 465, Line 10).

Appellant was so held under imprisonment, until forced payment of the balance owed on Appellant's accrued charge account was forcefully taken from Appellant at the Beverly Hills Police Station.

The record and entire testimony throughout this trial, substantiates that Mrs. Lopo was in the Appellee's store as an invited guest, making purchases on her own charge account and signing her own name to the purchase slips. But never to any other, or various charge accounts as told to Mr. Devich, the arresting officer, by Mr. Plotnick.

Therefore, Appellant's unlawful arrest and imprisonment for debt is in direct violation of, Title 18, Section 241, United States Code. Chapter 13, Civil Rights.--Conspiracy, or concerted action, against rights of citizens.

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same."

Also, violation of Appellant's rights under Section 1, the Due Process Clause

of the Fourteenth Amendment of the United States Constitution.

II

THE JUDGMENT OR DECREE SOUGHT TO BE REVIEWED

The judgment or decree sought to be reviewed was entered on December 10, 1968. The Notice of Appeal to this Court was filed in the District Court of Appeal, Second Appellate District, Division Two, State of California on March 10, 1969, which contained Appellant's first request for the record. - A second request for the record was filed on March 17, 1969, and denied on March 28, 1969. - On March 29, 1969, the Honorable Justice Douglas granted Appellant's motion to extend time to docket the appeal and file the record, to and including April 14, 1969.

The Jurisdictional Statement, and Record was filed and the Appeal docketed on April 14, 1969.

III

THE STATUTORY PROVISIONS BELIEVED TO CONFER ON THIS COURT'S JURISDICTION OF THE APPEAL IS 28 U.S.C. SEC. 1257(1)

"Where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity."

IV

VIOLATIONS OF APPELLANT'S UNITED STATES CONSTITUTIONAL RIGHTS, UNITED STATES CODE OF CIVIL RIGHTS, AND OTHER CASES BELIEVED TO SUSTAIN JURISDICTION

A. CONSPIRACY, APPELLANT'S UNLAWFUL ARREST, AND IMPRISONMENT FOR DEBT

"U.S. Miss. 1966. Statute prohibiting conspiracy to injure, oppress, threaten or intimidate any citizen in free exercise or enjoyment of any right or privilege secured to him by Constitution or laws of United States extends to conspiracies with respect to rights and privileges protected by Fourteenth Amendment and extends to conspiracies, otherwise in scope of section, participated in by officials alone or in collaboration with private persons.

18 U.S.C.A. § 241; U.S.C.A. Const. Amend. 14."

U.S. v. Price, 86 S.Ct. 1152, 383 U.S. 787, 16 L.Ed. 2d 267.

"Statute prohibiting conspiracy to injure, oppress, threaten or intimidate any person in free exercise or enjoyment of any right or privilege secured to him by Constitution or laws of United States embraces all of rights and privileges secured to citizens by all of Constitution and all of laws of United States and was not intended to be confined to rights that are conferred by or flow from federal government as distinguished from those secured or

confirmed or guaranteed by Constitution.

18 U.S.C.A. § 241; U.S.C.A. Const. Amend. 14. - Id."

In the instant case, one of the means of accomplishing the object of the conspiracy, was by Appellee giving false "information" to the police, to effect Appellant's arrest on a felony charge, thereby involving the police to oppress, intimidate and force payment of a debt. The arrest was without issue of warrant, and from testimony of arresting officer, Mr. Devich, we find that when he contacted Mr. Plotnick at Saks, that they stepped out into the hall, and with just the two of them present, Mr. Plotnick told him that "Mrs. Lopo had signed her name to various charge accounts on that date." So on this "information"--is the reason that he placed Mrs. Lopo under arrest for forgery (R.T., Page 464, line 1 to Page 465, line 10).

B. CAPTAIN OF BEVERLY HILLS DETECTIVE BUREAU ACCUSED APPELLEE OF USING POLICE IN CONSPIRACY

To substantiate, for this Honorable Court's convenience, that this issue was brought before the trial court, we present that relevant part of the testimony of Mr. Ray Borders, who was Captain of the Beverly Hills Detective Bureau, at the time of incident (R.T., Page 15, Lines 11 through 20).

"Q. You have told us, sir, of all of your conversation with Mr. Plotnick on this occasion?

A. I told Mr. Plotnick that it seemed to me he had himself in a jackpot, that it looked as though he was trying to get the Police Department to pull the chestnuts out of the fire for him."

C. OFFER OF PROOF OF CONSPIRACY, THAT POLICE WERE USED TO FORCE PAYMENT OF ACCOUNT

"Q. By Mr. Caruso: Mr. Plotnick, will you please examine that Plaintiffs 3, that piece of paper on which you gave a receipt for the money.

My question is, when prior to December 19, 1959, had you given a receipt similar to that to any customer at Saks?***

"***Mr. Caruso: I would like to make an offer of proof.

The court: All right. Do so at the bench.

Mr. Caruso: If I am permitted to ask this question, my offer of proof is that we will show that Saks Fifth Avenue is using the Police Department as part of their coercion in getting money from this woman.

Since the gravamen of false imprisonment is the deprivation of her liberty, and this is an intricate part of that proof, we are being deprived of what I

think is the probable cause which is the gravamen of the false imprisonment.***

"***[The following proceedings were held in open court, within hearing of the jury.]

The Court: Read the question back, and you may answer the question.

[The Reporter read the question.]

The Witness: I don't recall ever giving any customer a receipt, a hand receipt. This was, I think, the first time it ever occurred."

(R.T., Page 420, line 7 to 12; R.T., Page 420, line 22 to Page 421, Line 9; R.T., Page 421, line 25 to Page 422, line 6.)

D. CONSPIRACY INSTRUCTIONS TO JURY REFUSED BY THE COURT

To further substantiate, that the issues of civil conspiracy was forcefully stressed before the court, and that the police were used by the Appellee to arrest, injure, oppress, threaten and force payment of Appellant's bill, we present Plaintiff's requested Special Jury Instructions No. 19 and No. 24. - Both were refused by the court.

Plaintiff's Special Jury Instruction No. 19

"You are instructed that a civil conspiracy exists when a preponderance of

the evidence shows that a concert of action exists among persons to unlawfully detain the Plaintiff without her consent and that the action is in furtherance of a common plan to commit a wrongful act and that the persons so acting had knowledge of the plan and its unlawful purpose. It is not necessary that a person join the plan at the time of its inception. Every one who enters into such a common plan is in law a party to every act previously or subsequently done by any of the other persons in pursuance of it.

The agreement between persons need not be proven by direct evidence but may be shown by circumstantial evidence that tends to show a common intent. The ultimate fact of such a plan is determined from those inferences which are natural and properly drawn from those matters directly proved.

In an action for damages for false imprisonment resulting from the acts of such persons, the major significance of a plant lies in the fact that it renders the Defendant liable for all the damages ensuing from the unlawful imprisonment irrespective of whether or not the specific individual personally caused such imprisonment, and regardless of the specific individual's degree of activity of participation in the commission of the alleged wrongful act of flase imprisonment.

Therefore, if you find that the Beverly Hills Police Officers, Bolander and Devich, unlawfully detained Plaintiff in a common plan with the Defendant, Saks Fifth Avenue, to collect the bill owing the

Defendant, Saks Fifth Avenue or wrongfully detained the Plaintiff until the alleged amount due was paid, the Plaintiff may recover from the Defendant Saks Fifth Avenue, for all the damages resulting from acts of the individual conspirators.

Requested by Plaintiff
Refused
Rhone, Judge."

Plaintiff's Special Jury Instruction No. 24

- See, Reporter's Transcript page 571 -

Requested by Plaintiff
Refused
Rhone, Judge."

E. PLAINTIFF WRONGFULLY CHARGED TO ASSUME BURDEN OF PROOF, CONSPIRACY/ARREST WITHOUT WARRANT, SEARCH AND SEIZURE WITHOUT WARRANT, IMPRISONMENT FOR DEBT, TRIAL BY KANGAROO COURT AT POLICE STATION, NO DUE PROCESS OF LAW, FORCED PAYMENT AT POLICE STATION BEFORE RELEASE. - THESE ARE SUBSTANTIAL FEDERAL QUESTIONS - PRESENTED BY THIS APPEAL

Burden of Proof: - The Trial Court's failure to instruct the jury as to which set of facts of which there was evidence in the record, if any, constituted probable cause for an arrest was particularly prejudicial to interests of the Plaintiff in that the burden of proof is

on the Defendant to prove justification for an arrest, when arrest without warrant is pleaded. The jury had to make up its own mind as to what kind of evidence constituted probable cause to make an arrest, and then to determine that issue of law (properly to be determined by the court) in light of the court's instruction, above mentioned, that the burden in all respects was on the Plaintiff. (R.T., Pages 537-538) To force the Plaintiff to assume the burden of proof, was not due process of law. Therefore, is in violation of due process clause of the Fourteenth Amendment of the United States Constitution.

Watkins v. Oakland Jockey Club,
86 F.Supp. 1006, affirmed
183 F.2d. 440

New York Life Ins. Co. v. Rogers,
126 F.2d. 784

Riegel v. Hygrade Seed Co., Inc.,
47 F.Supp. 290

Probable Cause: - When a person has been detained and that detention is not for the investigation of a offense believed to have been committed at the time, then there is no defense of probable cause available to the defendant. This point was clearly established in the case of Moffatt v. Buffums, Inc., 21 Cal.App.2d 371.

In the instant case, it is shown beyond any doubt that Plaintiff-Appellant was not being detained for investigation on any grounds that she was stealing the property of another, or of any crime

suspected, but on the contrary, was detained for the sole purpose of forcing the payment of money owed for prior purchases. Therefore, is in violation of Title 18, Section 241, United States Code, Chapter 13, Civil Rights, - conspiracy or concerted action, against rights of citizens.

Also, in violation of Due Process Clause of The Fourteenth Amendment of the United States Constitution.

Due Process of Law: Conduct and false charges of the Appellee before the Appeal Court, and the State Supreme Court of California -- Appellee knowingly and intentionally violated Appeal Rules and Due-Process-of-Law, by submitting documents to the Appeal Court without serving such copies on the Appellant.

This document, dated October 26, 1968, made false charges of forgery that Appellant applied Attorney Ward Sullivan's name to briefs which Appellee charged were prepared by George Lopo, and false charges that Sylvia Lopo was a self-appointed attorney therefore not properly before that court. These charges, even if true (but definately not.), could not then be raised for the first time, and then to deliberately proceed to withhold notice from Appellant until the Supreme Court made its decision, based on such false information, of which the Appellant had no knowledge, or opportunity to answer such charges. For Appellant to be falsely charged and tried without her knowledge of such charges, is not Due-Process-of-Law. Therefore is in violation of the Due Process Clause of the Fourteenth Amendment of the United States

Constitution.

Appellant's failure to receive or learn of Defendant-Appellee's document, dated October 26, 1968, is unconstitutional.

Armstrong v. Manzo, 85 S.Ct. 1187 (1965), 380 U.S. 545

Appellant's Unlawful Arrest and Imprisonment For Debt, is a violation of her Constitutional Rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, Section I, Clause 2: "---nor shall any State deprive any person of---liberty, or property, without due process of law."

Constitutional Law: "Fourth Amendment prohibition against unreasonable search and seizure is enforceable against the states through the Fourteenth Amendment.

U.S.C.A. Const. Amends. 4, 14."

Camara v. Municipal Court, 87 S.Ct. 1727 (1967), 387 U.S. 523.

Search and Seizures: - Appellant's rights under the Fourth Amendement which protects people--and not simply "areas"--against unreasonable search and seizure.-

"While it is well settled that upon a valid arrest a search of the person may be lawfully made and any evidence found thereon tending to establish the commission of a crime may be lawfully seized, nevertheless, if the arrest is unlawful the incidental search in connection therewith

is likewise unlawful and in violation of the constitutional rights of the person."

Weeks v. United States, 232 U.S. 383, 58 L.Ed. 652, 34 Sup. Ct. 341, L.R.A. 1915B, 834, Ann. Cas. 1915C, 1177.

Search and Seizures: - "Fourth Amendment protects people, not places. U.S.C.A. Const. Amend. 4.

Search and Seizures: - Fourth Amendment protects people, not simply areas, against unreasonable search and seizure. U.S.C.A. Const. Amend. 4.

Search and Seizure: - Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures. U.S.C.A. Const. Amend. 4."

Katz v. United States, 88 S.Ct. 507 (1967), 389 U.S. 347.

The trial record substantiates that this was an unlawful arrest, without warrant, therefore an unlawful and "unreasonable" search and seizure without warrant, and that Appellee used the fruits (money) of the seizure for his own gain.

The trial record also substantiates, beyond all doubt, that Appellant suffered severe punishment and injuries inflicted upon her person by the false imprisonment, arrest, and physical assault during the unlawful and unreasonably search and seizure acts.

"We are here concerned with allegations

which squarely and indisputably involve state action in direct violation of the mandate of the Fourteenth Amendment--that no state shall deprive any person of life or liberty without due process of law. This is a direct, traditional concern of the Federal Government. It is an area in which the federal interest has existed for at least a century, and in which federal participation has intensified as part of a renewed emphasis upon civil rights."

United States v. Price, 86 S.Ct. 1152 (1966), 383 U.S. 787, 16 L.Ed.2d 267.

State-Court-Invalidation of Federal Law is involved in this instant case. All issues violate Constitutional Rights of Appellant, as are consistently and forcefully argued herein. And as presented in all of Appellant's State Court Briefs.

V

STATE COURT BRIEFS

A. APPELLANT'S OPENING BRIEF

Plaintiff's Special Jury Instruction No. 18 (page 28):

"You are further instructed that the right of personal liberty is guaranteed to every person by the Constitution of the United States, by the Constitution of the State of California, and by virtue of the law of the land.*** ***If you find that the Plaintiff was detained either as a result of the act of Mr. Mathis or Mr.

Plotnick in themselves wrongfully violating the personal liberty of the Plaintiff or as a result of the unlawful act of the Police Officers, as agents for Saks Fifth Avenue or authorized, encouraged, directed, procured or assisted in by Mr. Plotnick or Mr. Mathis and such detention was without legal justification.***"

This instruction embodied all the guarantees of the United States Constitutional Amendments, Five, Fourteenth Amend. Section I, and United States Code §241. Conspiracy.

However, all of the foregoing instruction was stricken out by the trial court, and when any mention was made as to the unlawful violation of Plaintiff's Constitutional Rights, in any modified instructions, that portion of the instruction was stricken out.

Also, see: Calls For Police, page 17. - Arrested For Forgery, page 8. - Taken To Police Station, page 9. - Placed Her Under Arrest Because of Information Given By Plotnick, page 25. - Collected Account From Her at Police Station, page 20.

B. APPELLANT'S REPLY BRIEF

Page 17; "Respondent had no reason whatsoever to suspect Appellant of the commission of a crime, but it was solely for the purpose of collecting a delinquent account and constituted a violation of her rights against imprisonment for debt under the provisions of Article I, Sec. 15 of the Constitution of the State of California."

issued."

Amendment 5

"Appellant was deprived of her liberty and property, without due process of law."

Amendment 6

"Appellant was held under threat and duress, and denied the right to have counsel (see R.T., page 251, line 13 to line 18)."

"The Appellant, Mrs. Helen Lopo, was also deprived of her Constitutional Rights under Article I, Section 3--Article I, Section 15--Article I, Section 19--Article I, Section 22, of the Constitution of California."

Also page 37:

(1) "Being wrongfully and illegally detained by the Defendant, Saks Fifth Avenue; that no crime had been committed at the time or prior to the detention, and that Defendant had no probable cause to believe that Plaintiff had committed a crime; and,

(2) Being falsely arrested by the Beverly Hills Police Officers in conjunction with, aided and abetted by and in conspiracy with the agents and employees of Saks Fifth Avenue."

Also, see page 22: "Now, Mrs. Lopo has been falsely imprisoned, arrested on suspicion of forgery, physically assaulted

(R.T., Page 263, line 1 to Page 264, line 26), also (R.T., Page 396, lines 23-26), browbeaten, and forced to pay a debt, while so held under threat and duress. She was told to:--Pay Saks and we will let you go--or would you rather be locked up?--Pay Saks or we will book, fingerprint and put you in jail. And Mrs. Lopo under these threats and duress, begged, no, please don't do that." (R.T., Page 250, lines 1-22.)

D. DISTRICT COURT OF APPEAL REFUSED TO SUPPORT AND DEFEND THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF CALIFORNIA

"3--Constitutional Obligations

It is the duty of all justices and judges of the Courts of California to support and defend the Constitution of the United States and the Constitution of California; in so doing, they shall fearlessly observe and apply fundamental limitations and guarantees."

California Rules of Court:
Appendix - Division II

Page 2. Appellant's Petition For Rehearing further states: "The court has yet to decide on legal issues such as, the trial court's Instruction No. 21, that charged the jury that the general burden of proof was on the Plaintiff. This is in error as stated by points and authorities submitted by Plaintiff. -

Search and Seizure, without warrant, unlawful and illegal use of money.

Violation of Mrs. Lopo's Constitutional Rights.

All other issues of material facts as contained in this petition."

STATEMENT OF THE CASE

It is indeed shocking to find that an occurrence such as this could really happen. When, as an invitee of Appellee, and while shopping in Appellee's store in Beverly Hills, Appellee illegally, and unlawfully, and without reasonable or probable cause, imprisoned the Appellant, and caused her to be arrested and taken to the police station on a false charge of forgery for the purpose of collecting money due Appellee from Appellant upon her open book, or charge account.

When Mrs. Lopo and her daughter, were grabbed by the arm and forced to go to the upstairs office of Saks, she told them that she was Mrs. Lopo and that they could verify this by her signature on the sales slips that she had just signed, and that they could compare this with her account signature (R.T., Page 224, line 1 to line 26). As this was a signature account, they had no charge-a-plate system. However, their reply was that her account was deliquent, they threw a check book in front of her, telling her to write a check and pay her bill. She said she couldn't as she had no checking account, but would have her husband put a check in the mail

over the weekend. This did not satisfy Mr. Plotnick and he continued to demand that she pay her bill (R.T., page 394, line 23 to page 395, line 16).

From the time that Appellee first apprehended the Appellant at its store, until her departure to the police station, the Appellee made six (6) hotly pressed specific demands on Mrs. Lopo that she pay her accured bill.

The arrest was without issue of a warrant, from the testimony of the arresting officer, Mr. Devich, we find that when he contacted Mr. Plotnick at Saks, that they stepped out into the hall and with just the two of them present, that from his discussion, is why he placed Mrs. Lopo under arrest. (R.T., page 464, line 25 to page 465, line 4.)

Now, Mrs. Lopo has been falsely imprisoned, arrested for forgery, physically assaulted, (R.T., page 263, line 1 to page 264, line 26) also (R.T., page 396, lines 23-26) browbeaten, and forced to pay a debt, while so held under threat and duress. She was told to:-- Pay Saks and we will let you go--or would you rather be locked up?--Pay Saks or we will book, fingerprint and put you in jail. And Mrs. Lopo under these threats and duress, begged, "No, please don't do that" (R.T., page 250, lines 1-22).

The Appellee took Mrs. Lopo's ledger card to the police station, knowing that the lady he had under arrest was Mrs. Lopo. Now at the police station, "Prior"

to the collection of the bill, the Appellee did not produce, receive, or even attempt to acquire any identification on the Appellant whatsoever. (R.T., page 419, lines 1-7.)

But Appellee did demand and force collection of the bill at the police station and gave the lady a receipt made out to Mrs. Lopo, thereby acknowledging her to be Mrs. Lopo. It should also be noted that Mrs. Lopo did not have possession of her purse, for it was only when Appellee handed her a receipt for the sum of $574.93, that they gave her the purse.

The District Court in its written Opinion ruled solely on the question of probable cause, and ignored all other issues.

Appellant's contention is that the Court erred in its instruction to the jury. The instruction permitted the jury to determine if Saks was legally justified in its action. Probable cause is a question of law for the Court.

SUBSTANTIALITY OF FEDERAL QUESTIONS

The questions raised in this case are without doubt the most vital Due Process, and Civil Rights issues encompassed in the United States Constitution. They reach the very core of our lives as free people. They, by constitutional guarantees, abolish imprisonment to force payment of a private debt.

For if this procedure to force collection of a debt is condoned, it means that any person in the United States, who becomes a debtor, is subject to seizure and imprisonment and physical assault to force payment of such debt.

I, do not believe that this Court can sanction the procedure under which a person is illegally seized, held and tried by a kangaroo court of conspirators (of no authority) at the police station, then forced to buy his freedom.

The right of a creditor to collect for an outstanding account is governed by rules of Civil Law and does not, under any stretch of the imagination, justify the false arrest and imprisonment of a person to accomplish that end.

I believe that the discussion above, demonstrates that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral arguments, for their resolution.

CONCLUSION

For the foregoing reasons, jurisdiction should be granted. Appellee's Motion to Dismiss is completely without foundation and should be denied. Appellant's appeal was timely, in conformity to the statute, and is within the jurisdiction of this Court.

Appellant has properly prosecuted her appeal which presents very weighty and substantial federal questions resting at the

very pedestal of our United States Constitution. Appellant's appeal raises vital issues which formed the very basis from which grew the need for the Constitution of the United States.

WHEREFORE, Appellant respectfully submits that this Court grant jurisdiction.

Respectfully submitted,

HELEN LOPO, by her
Guardian Ad Litem,
SYLVIA TINA LOPO

In Propria Persons for
Petitioner-Appellant.

Civ 31906

SECOND DISTRICT, CIVIL NO. 31906

LOS ANGELES COUNTY

JUDGE 748299

BAYARD RHONE

HELEN LOPO BY HER GUARDIAN AD LITEM SYLVIA JINA LOPO
PLTF & APLT

VS

SAKS FIFTH AVENUE, ETC
DEFT & RESP.

PRO PER: 16866 ROYAL HILLS DR.
ENCINO
S. Ward Dickson
9601 Wilshire Blvd. Beverly Hills 860 S. Carondelet Pasadena
Robert E. Cunis

BOLTON, GRAFF & DUNNE
210 W. 7th ST. LA.

Edward L. Lascher
2477 Harbor Blvd

JUN 12 1967

FILED RECORD ON APPEAL R[illegible] Appeal from JDMT. + VERDICT
NOTICE OF APPEAL FILED 7-16-67

JUL 26 1967 Aple notified pursuant to Rule [illegible]

JUL 27 1967 Filed substitution of atty for plff

SEP 15 1967 FILED APPELLANT'S OPENING BRIEF

OCT 17 1967 Filed association of atty for deft.

NOV 27 1967 Resp notified pursuant to [illegible]

DEC 27 1967 FILED RESPONDENT'S BRIEF

FEB 9 - 1968 FILED APPELLANT'S REPLY BRIEF.

Trans to Div 2

JUL 23 1968 ORDERED ON CALENDAR

JUL 29 1968 Transcript received from Superior Court

SEP 10 1968 Filed notice of Mot for substitution of atty for plff

SEP 12 1968 ARGUED AND SUBMITTED Mot to substitute atty for plff granted.

OCT 10 1968 The judgment is affirmed. (Ct-Not-Pub.)
Fleming, J.

Roth, P.J.
Kaufman, J. Pro Tem.

OCT 25 1968

I, CLAY ROBBINS, JR., Clerk of the Court of Appeal in and for the Second Appellate District of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the register of actions of 2nd Civil 31906 Lopo, etc. vs Saks Fifth Avenue, etc.

NOTICE OF APPEAL FILED 1-16-67

JUL 26 1967 Aple notified pursuant to Rule 17c — Assigned to Div. 2 TWP

JUL 27 1967 Filed subst. of atty for plff — Not. 9-15-stip

SEP 15 1967 FILED APPELLANT'S OPENING BRIEF

OCT 17 1967 Filed association of atty for deft. — Resp 11-15

NOV 27 1967 Resp notified pursuant to Rule 17b

DEC 27 1967 FILED RESPONDENT'S BRIEF

FEB 9 - 1968 FILED APPELLANT'S REPLY BRIEF. — Oral Stmt 2-9-68

Trans to Div 2

JUL 23 1968 ORDERED ON CALENDAR — SEP 12 1968

JUL 29 1968 File Exhibits received from Superior Court.

SEP 10 1968 Filed notice of Mot for subst of atty for plff

SEP 12 1968 ARGUED AND SUBMITTED Mo to subst atty for plff granted.

OCT 10 1968 The judgment is affirmed. (Card-Non-Pub.)

Fleming, J.

Roth, P. J.

Stutler, J. Pro-Tem.

OCT 25 1968

I, CLAY ROBBINS, JR., Clerk of the Court of Appeal in and for the Second Appellate District of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of the register of actions of 2nd Civil 31906 Lopo, etc. vs Saks Fifth Avenue, etc. - - -

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, say:

I am and was at all times herein mentioned a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that my business address is 608 South Hill Street, Los Angeles, California 90014.

That on May 22, 1969, I served the within SUPPLEMENT TO JURISDICTIONAL STATEMENT AND REPLY TO APPELLEE'S MOTION TO DISMISS, upon the DEFENDANT in said cause, by depositing one copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, in a mail box regularly maintained by the Government of the United States at Los Angeles, California, addressed to the attorneys of record for said Defendant at their office addresses as follows:

Bolton, Groff & Dunne
210 West 7th Street
Los Angeles, Calif.

Edward L. Lascher
2497 Harbor Blvd.
Ventura, Calif.

United States Supreme Court
Office of Clerk
1 First Street North East
Washington, D.C.

Executed on May 22, 1969, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

_____

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JUN 16 1969
JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE
UNITED STATES

October Term, 1968

No. 1257

HELEN LOPO, by her Guardian
Ad Litem, SYLVIA TINA LOPO,

Plaintiff and Appellant,

vs.

SAKS FIFTH AVENUE, a New York
Corporation,

Defendant and Appellee.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO

PETITION FOR REHEARING OF DECISION NO. 1257 DECIDED ON MAY 26, 1969 AND CERTIFICATE OF COUNSEL

HELEN LOPO, by her Guardian
Ad Litem, SYLVIA TINA LOPO
In Propria Persona

16366 Royal Hills Drive
Encino, California

In Propria Persona for
Plaintiff-Appellant

IN THE
SUPREME COURT OF THE
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IN THE
SUPREME COURT OF THE
UNITED STATES

October Term, 1968

No. 1257

HELEN LOPO, by her Guardian
Ad Litem, SYLVIA TINA LOPO,

Plaintiff and Appellant,

vs.

SAKS FIFTH AVENUE, a New York
Corporation,

Defendant and Appellee.

PETITION FOR REHEARING
OF DECISION NO. 1257 DECIDED ON
MAY 26, 1969

Appellant Helen Lopo, by and through her "Guardian Ad Litem," Sylvia Tina Lopo, hereby petitions the United States Supreme Court, for a Rehearing from the Decision No. 1257 decided on May 26, 1969.
--on the following grounds--

1. That there has been intervening decisions by this Court of the same or similar issues in the case of:

U.S. v. Price, 86 S.Ct. 1152; 383 U.S. 787, 16 L.Ed. 2d 267, (1966). 18 U.S.C.A. § 241; U.S.C.A. Const. Amend. 14.

U.S. V. Guest, 86 S.Ct. 1170, 383 U.S. 745, 16 L.Ed. 2d 239 (1966).

Wherein the court found as follows:

"Statute pertaining to conspiracy against rights of citizens encompasses due process and equal protection clauses of Fourteenth Amendment and is not unconstitutionally vague.

18 U.S.C.A. § 241; U.S.C.A. Const. Amend. 14.

Since gravamen of offense under statute pertaining to conspiracy against rights of citizens is conspiracy, requirement that offender must act with specific intent to interfere with federal rights in question is satisfied.

18 U.S.C.A. § 241; U.S.C.A. Const. Amend. 14.

One of means of accomplishing object of conspiracy was 'by causing the arrest of Negroes by means of false reports that such Negroes had committed criminal acts' contained allegation of state involvement sufficient to require denial of motion to dismiss.

18 U.S.C.A. § 241; U.S.C.A. Const. Amend. 14."

In the instant case, one of the means of accomplishing the object of the conspiracy, was by Appellee giving false

"information" to police, to cause Appellant's arrest on a felony charge, the arrest was without issuance of a warrant, and Appellant was held at the police station and forced to pay her debt ($574.93) to secure her release.

Appellant respectfully submits that the issues and means of accomplishing the conspiracy in these cases are the same. However, in the instant case Appellant was denied equal protection, privileges, and rights by this Court, in light of the decision and rights as granted in U.S. v. Guest and U.S. v. Price.

2. That the state court avoided deciding federal questions in this instant case, and adopted its view in order to evade a constitutional issue, by putting forth nonfederal grounds of decision without substantial support, and thus to defeat jurisdiction of the United States Supreme Court.

--citing--

"A State Court may not avoid deciding federal questions and thus defeat jurisdiction of United States Supreme Court by putting forward nonfederal grounds of decision which are without any fair or substantial support."

Wolfe v. State of North Carolina, 80 S.Ct. 1482 (1960).

In sections IV and V of this petition Appellant substantiates that violation of her Constitutional Rights, and United States Code of Civil Rights on Conspiracy,

were advanced before the trial oourt, and that jury instructions were requested by the Plaintiff on these issues, and that all such jury instructions were refused by the court (see sec. IV).

That all constitutional issues were advanced before the state appellate courts and that Appellant specifically asked that they be decided (see sec. V, D).

However, the District Court of Appeal avoided the constitutional issues, and put forth nonfederal grounds of decision which are without fair or substantial support.

Appellant substantiates this in her following argument.

3. The Petitioner-Appellant did advance an important argument, and cited additional cases in support of her argument, in her--Supplement To Jurisdictional Statement and Reply To Appellee's Motion To Dismiss.

However, it reached this Court too late to be considered. Therefore, Appellant is resubmitting her argument.

Appellant Helen Lopo in this instant case is not appealing to this Court from a conviction, or from an act where she harmed society and would seek to use this Court for escape.

She is appealing to this Honorable Court for protection;--For protection with respect to rights and privileges secured and guaranteed to her by the Constitution and laws of the land of her birth.

Mrs. Lopo was the victim of a conspiracy; she was arrested without issuance of a warrant on a false charge of forgery and imprisoned for debt, physically assaulted and knocked down; $30,000.00 was forcefully and illegally taken from her person and kept by her conspirators for their own use; when she requested a receipt she was told to forget-it, that she and her money were in their custody.

Plotnick (Saks) and two police officers forced Mrs. Lopo into a police car and took her to the station; Mr. Plotnick took Mrs. Lopo's ledger card with him, well-prepared to collect the bill. Mrs. Lopo was held at the police station under threat and duress and forced to pay her debt to secure her release.

She was told to: -- Pay Saks and we will let you go, -- or would you rather be locked up? -- Pay Saks, or we will book, finger print and put you in jail. And Mrs. Lopo under these threats and duress, begged, "No, please don't do that" (R.T. Page 250, lines 1-22).

Appellee took $600.00 and gave her a receipt for $574.93 made out to Mrs. George Lopo. Thereby acknowledging her to be Mrs. Lopo, but she did not ever receive any change from the $600.00 (R.T. Page 252, lines 1-26).

The Appellee and the police were conspirators in this action; they acted entirely on their own, without judicial authority.

There was no issuance of an arrest warrant, or a search warrant.

No judicial authority was ever authorized.

Therefore, there was no Due Process of Law.

The acts of conspiracy, and imprisonment for debt, and violation of Appellant's Constitutional Rights, are not matters that would be termed issues of fact;--Here, they are out-right, self admissions, by the conspirators.

a). Mr. Ray Borders, who was Captain of the Beverly Hills Police Department at time of incident, testified and accused Appellee of using the police in conspiracy:

> "Q. You have told us, sir, of all of your conversation with Mr. Plotnick on this occasion.
>
> A. I told Mr. Plotnick that it seemed to me he had himself in a jackpot, that it looked as though he was trying to get the Police Department to pull the chestnuts out of the fire for him" (R.T. Page 15, lines 11-20).

b). Mr. Devich, who was the arresting officer testified that, Mr. Plotnick (Saks) told him that "Mrs. Lopo had signed her name to various charge accounts on that date"; on this (false) "information"--is the reason he placed Mrs. Lopo under arrest

for forgery (R.T. Page 464, Line 1 to page 465, Line 10).

c). Mr. Plotnick (Saks) made the following notation on Mrs. Lopo's ledger card.--"Picked up in store; called Beverly Hills Police," or "B.H. Police, not booked at station, but we received $574.93" (R.T. Page 408, lines 1-26).

The District Court avoided deciding federal questions; it refused Appellant's repeated requests by avoiding all issues of Appellant's Constitutional Rights.

These issues were advanced in all Appellant's briefs, including her State Supreme Court brief. (see sec. V--State Court Briefs)

The District Court ruled solely on the question of probable cause.

--citing--

"A storekeeper has a right to detain a person whom he reasonably believes is stealing from him, for a reasonable time, to investigate in a reasonable manner."

Collyer v. S. H. Kress (5 Cal. 2d 175, 180-181).

Mr. Ray Borders, who was captain of the Beverly Hills Police Department at the time of incident testified (R.T. Page 14, lines 19-26):

"Q. Did you ask him if he had observed them stealing

anything, sir?

A. I did.

Q. What was his response?

A. He had not observed them stealing anything.

Q. Will you tell us what else was said, if anything, in this conversation?

A. I told him in this matter I couldn't help him."

Mr. Borders' testimony is continued on (R.T. Page 20, lines 2-10):

"Q. Mr. Borders, you have just testified that you did not dispatch the officers in response to Mr. Plotnick's request. Did you subsequently dispatch officers to Saks Fifth Avenue?

A. I did.

Q. Were you instructed to do so by anyone, any superior?

A. Yes."

Probable cause does not under any circumstance give Appellee the right to use the police in conspiracy, by giving them (false) "information" to effect Appellant's arrest on a felony charge without issuance of a warrant, or to physically assault Appellant, knock her down and seize $30,000.00 from her person, without

issuance of a search warrant.

Then by force, take Appellant to the police station, and there hold her until forced payment of the debt was receibed by Appellee.

These acts are violations of Appellant's Constitutional Rights, as advanced under sections IV and V of this petition.

Appellant submits that it is evident, beyond any question, that the District Court of Appeal did avoid deciding federal questions on Appellant's Constitutional Rights, to thus defeat jurisdiction of the United States Supreme Court.

--citing--

"A State Court may not avoid deciding federal questions and thus defeat jurisdiction of United States Supreme Court by putting forward nonfederal grounds of decision which are without any fair or substantial support.

Wolfe v. State of North Carolina, 80 S.Ct. 1482 (1960).

"3--Constitutional Obligations

It is the duty of all justices and judges of the Courts of California to support and defend the Constitution of the United States and the Constitution of California; in so doing, they shall fearlessly observe and apply fundamental limitations and guarantees."

California Rules of Court:
Appendix - Division II

The District Court Cited a case for authority on probable cause, stating;--a storekeeper has a right to detail a person whom he reasonably believes is stealing from him, for a reasonable time, and in a reasonable manner.

However, when the captain of the Beverly Hills Police asked Mr. Plotnick; Did you observe them stealing anything? His answer was; That he did not observe them stealing anything. Where-on, the captain said this was not a police matter, and that the police could not help him.

Therefore, by Mr. Plotnick's own admission; "That the Appellant was not stealing anything", there can be no justification for Appellee's actions under the District Court's cited case (most definately not with fair or substantial support).

Mr. Plotnick, having just been refused police aid by Captain Borders, now realized from what Captain Borders told him, that his complaint would have to involve some committed crime, if he was to get police aid.

So from the testimony of the arresting officer, Mr. Devich, we find that when he later contacted Mr. Plotnick at Saks, that they stepped out into the hall and with just the two of them present, Plotnick told him that "Mrs. Lopa had signed her name to various charge accounts on that date." So on this

(false) "information" that Plotnick told him--Is the reason that he placed Mrs. Lopo under arrest for forgery. (R.T. Page 464, lines 1 to page 465, line 10).

This information and statement by Mr. Plotnick is absolutely and definately a lie, and was made to assure himself of getting police aid for Appellant's arrest.

Appellant advanced this point before the District Court in her Reply Brief: Page 17; "Respondent had no reason whatsoever to suspect Appellant of the commission of a crime, but it was solely for the purpose of collecting a delinquent account and constituted a violation of her rights against imprisonment for debt under the provisions of Article I, Sec. 15 of the Constitution of the State of California."

Imprisonment for debt is also a violation of United States Constitutional Rights under the Fifth Amendment.

Also, under Sec. I, of the Fourteenth Amendment of Due Process of Law.

For the foregoing reasons, and those submitted under sections IV and V of this petition, it is evident, beyond question, that the District Court of Appeal did avoid deciding federal questions and thus defeat jurisdiction of United States Supreme Court by putting forward non-federal grounds of decision which are without any fair or substantial support.

It must be remembered that when Appellee first requested police aid and stated the true facts, that he was told

that since he admits that Appellant did not steal anything and that no crime had been committed,--Therefore, was not a police matter and that the police could not help him.

It was only when he later gave the police false "information" that charged the Appellant with a felony, involving the police in the conspiracy that the arrest was made.

The very notation that Plotnick wrote on Mrs. Lopo's ledger card at the police station admits to the conspiracy, and imprisonment to force payment.

When Appellee resorts to conspiracy, by giving false "information" to the police to cause Appellant's arrest on a felony charge. Then he cannot reasonably believe that Appellant was stealing from him. For this definate reason the District Court's decision is without fair or substantial support.

Therefore, is a violation of both the California Constitution and the United States Constitutional Rights of the Appellant, as submitted herein this petition.

In face of these out-right, self admissions by the conspirators, -- Captain Borders' testimony that the police were used in a conspiracy, -- and cited cases of intervening decisions by this Court in support of Appellant's Constitutional Rights, -- and since the California District Court has avoided

deciding any federal questions, thus to deny this court jurisdiction.

There is then a definate basis; and dire need, for this Court to exercise its jurisdiction in this case on the grounds stated in this petition.

Therefore, Appellant respectfully submits that this Court should grant jurisdiction.

OPINION BELOW

Appellant's Jurisdictional Statement, and Record was filed and the appeal docketed on April 14, 1969. - The Opinion of the District Court of Appeal of the State of California was annexed as Appendix "A". - The Petition for Rehearing was denied on October 28, 1968. - Appellant's Petition for Hearing in the Supreme Court

of California was denied on December 4, 1968. - Copy of the Judgment, or Remittitur as to its date of entry (December 10, 1968) was annexed as Appendix "B". - Order Extending Time to Docket Appeal and File Record was annexed as Appendix "C". - Certificate from the Supreme Court of California, Dated 5, March, 1969, was annexed as Appendix "D". - District Court of Appeal's Docket Entry Sheet is annexed hereto as Appendix "E".

THE NOTICE OF APPEAL WAS TIMELY FILED

Appendix "B" to the Jurisdictional Statement is comprised of three pages; all are stamped with the filing date of December 18, 1968. - Page three states: "***It is Ordered, Adjudged and Decreed by the Court that the judgment is affirmed.*** ***I Clay Robbins, Jr. Clerk of the Court of Appeal, Second Appellate District, State of California, do hereby certify that the foregoing is a true copy of an original judgment entered on October 10, 1968, and now remaining of record in my office.

Dated: December 10, 1968.

Clay Robbins Jr., Clerk
By J. Kavanagh
Deputy"

The foregoing Judgment, or Remittitur, is the Final Decree and the last California Order.

This is also substantiated by Appendix

"D", Certificate from the Supreme Court of California, dated 5 March, 1969, which states: - "The record in the above case discloses that the judgment of the Court of Appeal, was final on December 10, 1968, and on that date the remittitur was issued to the county clerk."

THE CONTROLLING STATUTE

"Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court shall be taken or applied for within 90 days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding 60 days."

28 U.S.C. § 2101(c)

Therefore, March 10, 1969, was the 90th day after the issuance, or entry, of such judgment or decree.

"In determining what is a 'final judgment' or 'decree' within section of the Judicial Code vesting the Supreme Court with appellate jurisdiction from final judgment or decrees in state courts, the Supreme Court is not controlled by designation applied to it in state practice."

Jud. Code § 237, 28 U.S.C.A. § 344.

"Where a state statute provides that the decision of the Supreme Court of the state shall be final, but that judgment shall issue thereon, the issuance of the judgment, and not the filing of the decision, fixes the date within three months from which steps must be taken under the act of September 6, 1916, for review in the Supreme Court of the United States."

Puget Sound Power and Light Company v. County of King, 44 S.Ct. 261, 264 U.S. 22, 68 L.Ed. 541.

Cole V. Violette, 319 U.S. 581, 63 S.Ct. 1204, 87 L.Ed. 1600.

"An opinion of former Circuit Court of Appeals for Second Circuit was merely an 'opinion' rather than a 'judgment' though it gave dates of argument and decision and stated that order was reversed, and subsequent 'order for mandate' was the 'judgment' from whose date time of filing petition for certiorari should be computed."

Commissioner of Internal Revenue v. Estate of Edward T. Bedford et al, 65 S.Ct. 1157, 325 U.S. 283, 89 L.Ed. 1161.

Therefore, the Notice of Appeal was timely filed on March 10, 1969.

A. DOCKET ENTRIES ARE VOID OF ENTRY-DATES

It is a well-established rule that counsel or a party consulting the docket should not be required to search the record "as to the nature and effect of what has been done, or as to the timeliness of future proceedings." Any entry void of its date of entry shall be construed as non-existent and void, when pertaining "to the nature and effect of what has been done or as to the timeliness of further proceedings." No where on the Docket Record of the District Court of Appeal can the date of December 4, 1968, be found, and therefore, is non-existent.

Appellant would like to call the Court's attention to the District Court of Appeal's Entries (a copy of which is contained in the Appendix herein) designating the Denial of Hearing, which is ambiguous on its face so that a party consulting the docket has "a reasonable basis for doubt, as to the nature and effect of what has been done and as to the timeliness of further proceedings."

The District Court of Appeal's own Docket Entries allow the Denial of Hearing no basis for time computation.

"Since the running of time for motions after judgment and for appeal begins from the entry of judgment, such entry, though not necessarily in any particular forms of words, should be unambiguous on its face so that counsel or a party consulting the docket will have no reasonable basis for

doubt as to the nature and effect of what has been done or as to the timeliness of further proceedings."

Danzig v. Virgin Isle Hotel, (CA 3d, 1960) 278 F2d 580, 582.

B. APPEAL IS PROPERLY PROSECUTED

The appeal was timely docketed by Appellant on April 14, 1969, following the Order of Mr. Justice Douglas extending the time for docketing the appeal and filing the record to and including April 14, 1969.

Appellee's "Motion To Dismiss Appeal To Supreme Court", pursuant to Rule 14(2) was filed on March 25, 1969, in the California Court with the expressed knowledge, as stated in Appellee's said motion, of Appellant's then-pending "Motion To Extend Time To File Record and Docket Appeal."

According to Rule 14, said Motion is to be presented to the court possessed of the Record (the Court of Appeal of the State of California, Second Appellate District) prior to the docketing of the Appeal. Once the Appeal has been docketed by the Appellant, Rule 14 does not provide for the Appellee's said Motion. Furthermore, 14(2) does not provide for Appellee to renew said Motion once Appeal is docketed in this Court.

Appellant has properly prosecuted her Appeal by timely filing her Notice of

Appeal, on March 10, 1969, the earliest date upon which it was possible for Appellant to file (as Appellant did not learn of the Entry of Judgment until late in the afternoon of Friday, March 7, 1969). In said Notice of Appeal, Appellant designated the record for certification and transmittal to the United States Supreme Court.

On March 17, 1969, Appellant inquired as to whether the Record was ready for transmittal to this Court; Appellant was informed that her Notice of Appeal was filed that day bearing the March 10, 1969, Receiving Date, and the Clerk of the District Court of Appeal requested a second Designation of Record. Appellant renewed said Designation that day, March 17, 1969, by filing a second Request for Records; said request was denied on March 28, 1969. Appellant was persistent and after much reluctancy, the Clerk in the California Court of Appeal certified the Record for transmittal to this Court which received and filed Appellant's Record on April 14, 1969.

Appellant has timely docketed her Appeal to this Court.

The California Court of Appeal (at the request of the Appellee) placed Appellee's said Motion off-calendar.

Appellant's "Motion To Extend Time To File Record and Docket Appeal" correctly stated the Judgment Entry of December 10, 1968.

The Final Decree and last California Order (dated December 10, 1968) was filed

on December 18, 1968, which states: "It is Ordered, Adjudged and Decreed by the Court that the Judgment is affirmed***."

The Certificate of the Supreme Court of California, dated March 5, 1969, states: "The record in the above case discloses that the Judgment of the Court of Appeal was final on December 10, 1968, and on that date the Remittitur was issued to the County Clerk."

Therefore, Appellant respectfully submits that she filed a timely Notice of Appeal, and pursuant to the Order of Mr. Justice Douglas, Appellant further submits that she has timely docketed her Appeal.

(Cases Cited)

"This appeal was docketed 22 days after expiration of the *** period provided by the Rule. During that period, appellant made no application for an enlargement of time, *** nor did any explanation accompany the untimely docketing of the appeal. The jurisdictional statement itself is silent on the subject. *** Appellant's counsel, upon reporting the misunderstanding to a member of this Court, could have unquestionably have obtained an enlargement of the time to docket the case extending even beyond the 22 days within which the record was actually filed."

Pittsburgh Towing Company v. Mississippi Valley Barge Line Company et al, 87 S.Ct. 195 (1966), 385 U.S. 32, 17 L.Ed. 2d 31.

Appellant cites the above case, and submits that she did properly conform to all acts that the Court said should have been done.

Therefore, Appellant "unquestionably obtained an enlargement of time to docket the case."

(Cases Cited)

Appeal was not docketed until "after the time provided in Rule 13(1) expired. This defect, however is not jurisdictional. - Id."

Johnson v. Florida, 88 S.Ct. 1713 (1968). at 1714.

"Fact that appeal, notice of which was timely filed, was not docketed until 56 days after time provided by court rule had expired did not constitute jurisdictional defect. Supreme Court Rules, Rules 11, subd. 1, 13, subd. 1, 28 U.S.C.A."

Johnson v. Florida, 88 S.Ct. 1713 (1968), 391 U.S. 596

There are no grounds for Appellee's Motion to Dismiss the Appeal for Lack of Prosecution. Appellee's request to renew said motion on the ground of non-prosecution in this Court is without foundation.

GROUNDS ON WHICH JURISDICTION IS INVOKED

I

THE NATURE OF THE PROCEEDING

Appellant, Helen Lopo was a charge account customer at Appellee's stores for approximately the past 12 years, at their Detroit, Michigan, and their Beverly Hills, California stores.

However, Appellant had accrued an amount owed on her charge account, and while shopping with her daughter, Dolores, as invited guests at Appellee's Beverly Hills store, where both were authorized to sign for purchases, Appellant and her daughter were seized and placed under false imprisonment; repeated demands were made that Appellant pay her accrued bill, when she did not pay, the Beverly Hills Police were called. Six (6) hotly pressed demands were made that she pay up or else; when she did not pay, her purse was forcefully taken from her; she was knocked down and placed under arrest, and falsely charged with forgery, of charging to various accounts.

Appellant submits that the false imprisonment and arrest was a conspiracy; the arrest was without issue of warrant, and from testimony of the arresting officer, Mr. Devich, we find that when he contacted Mr. Plotnick at Saks, that they stepped out into the hall and with just the two of them present, Mr. Plotnick told him that "Mrs. Lopo had signed her name to

various charge accounts on that date". So on this "information"--is the reason that he placed Mrs. Lopo under arrest for forgery (R.T., Page 464, line 1 to Page 465, Line 10).

Appellant was so held under imprisonment, until forced payment of the balance owed on Appellant's accrued charge account was forcefully taken from Appellant at the Beverly Hills Police Station.

The record and entire testimony throughout this trial, substantiates that Mrs. Lopo was in the Appellee's store as an invited guest, making purchases on her own charge account and signing her own name to the purchase slips. But never to any other, or various charge accounts as told to Mr. Devich, the arresting officer, by Mr. Plotnick.

Therefore, Appellant's unlawful arrest and imprisonment for debt is in direct violation of, Title 18, Section 241, United States Code. Chapter 13, Civil Rights.--Conspiracy, or concerted action, against rights of citizens.

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same."

Also, violation of Appellant's rights under Section 1, the Due Process Clause

of the Fourteenth Amendment of the United States Constitution.

II

THE JUDGMENT OR DECREE SOUGHT TO BE REVIEWED

The judgment or decree sought to be reviewed was entered on December 10, 1968. The Notice of Appeal to this Court was filed in the District Court of Appeal, Second Appellate District, Division Two, State of California on March 10, 1969, which contained Appellant's first request for the record. - A second request for the record was filed on March 17, 1969, and denied on March 28, 1969. - On March 29, 1969, the Honorable Justice Douglas granted Appellant's motion to extend time to docket the appeal and file the record, to and including April 14, 1969.

The Jurisdictional Statement, and Record was filed and the Appeal docketed on April 14, 1969.

III

THE STATUTORY PROVISIONS BELIEVED TO CONFER ON THIS COURT'S JURISDICTION OF THE APPEAL IS 28 U.S.C. SEC. 1257(1)

"Where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity."

IV

VIOLATIONS OF APPELLANT'S UNITED STATES CONSTITUTIONAL RIGHTS, UNITED STATES CODE OF CIVIL RIGHTS, AND OTHER CASES BELIEVED TO SUSTAIN JURISDICTION

A. CONSPIRACY, APPELLANT'S UNLAWFUL ARREST, AND IMPRISONMENT FOR DEBT

"U.S. Miss. 1966. Statute prohibiting conspiracy to injure, oppress, threaten or intimidate any citizen in free exercise or enjoyment of any right or privilege secured to him by Constitution or laws of United States extends to conspiracies with respect to rights and privileges protected by Fourteenth Amendment and extends to conspiracies, otherwise in scope of section, participated in by officials alone or in collaboration with private persons.

18 U.S.C.A. § 241; U.S.C.A. Const. Amend. 14."

U.S. v. Price, 86 S.Ct. 1152, 383 U.S. 787, 16 L.Ed. 2d 267.

"Statute prohibiting conspiracy to injure, oppress, threaten or intimidate any person in free exercise or enjoyment of any right or privilege secured to him by Constitution or laws of United States embraces all of rights and privileges secured to citizens by all of Constitution and all of laws of United States and was not intended to be confined to rights that are conferred by or flow from federal government as distinguished from those secured or

confirmed or guaranteed by Constitution.

18 U.S.C.A. § 241; U.S.C.A. Const. Amend. 14. - Id."

In the instant case, one of the means of accomplishing the object of the conspiracy, was by Appellee giving false "information" to the police, to effect Appellant's arrest on a felony charge, thereby involving the police to oppress, intimidate and force payment of a debt. The arrest was without issue of warrant, and from testimony of arresting officer, Mr. Devich, we find that when he contacted Mr. Plotnick at Saks, that they stepped out into the hall, and with just the two of them present, Mr. Plotnick told him that "Mrs. Lopo had signed her name to various charge accounts on that date." So on this "information"--is the reason that he placed Mrs. Lopo under arrest for forgery (R.T., Page 464, line 1 to Page 465, line 10).

B. CAPTAIN OF BEVERLY HILLS DETECTIVE BUREAU ACCUSED APPELLEE OF USING POLICE IN CONSPIRACY

To substantiate, for this Honorable Court's convenience, that this issue was brought before the trial court, we present that relevant part of the testimony of Mr. Ray Borders, who was Captain of the Beverly Hills Detective Bureau, at the time of incident (R.T., Page 15, Lines 11 through 20).

"Q. You have told us, sir, of all of your conversation with Mr. Plotnick on this occasion?

A. I told Mr. Plotnick that it seemed to me he had himself in a jackpot, that it looked as though he was trying to get the Police Department to pull the chestnuts out of the fire for him."

C. OFFER OF PROOF OF CONSPIRACY, THAT POLICE WERE USED TO FORCE PAYMENT OF ACCOUNT

"Q. By Mr. Caruso: Mr. Plotnick, will you please examine that Plaintiffs 3, that piece of paper on which you gave a receipt for the money.

My question is, when prior to December 19, 1959, had you given a receipt similar to that to any customer at Saks?***

"***Mr. Caruso: I would like to make an offer of proof.

The court: All right. Do so at the bench.

Mr. Caruso: If I am permitted to ask this question, my offer of proof is that we will show that Saks Fifth Avenue is using the Police Department as part of their coercion in getting money from this woman.

Since the gravamen of false imprisonment is the deprivation of her liberty, and this is an intricate part of that proof, we are being deprived of what I

think is the probable cause which is the gravamen of the false imprisonment.***

"***[The following proceedings were held in open court, within hearing of the jury.]

The Court: Read the question back, and you may answer the question.

[The Reporter read the question.]

The Witness: I don't recall ever giving any customer a receipt, a hand receipt. This was, I think, the first time it ever occurred."

(R.T., Page 420, line 7 to 12; R.T., Page 420, line 22 to Page 421, Line 9; R.T., Page 421, line 25 to Page 422, line 6.)

D. CONSPIRACY INSTRUCTIONS TO JURY REFUSED BY THE COURT

To further substantiate, that the issues of civil conspiracy was forcefully stressed before the court, and that the police were used by the Appellee to arrest, injure, oppress, threaten and force payment of Appellant's bill, we present Plaintiff's requested Special Jury Instructions No. 19 and No. 24. - Both were refused by the court.

Plaintiff's Special Jury Instruction No. 19

"You are instructed that a civil conspiracy exists when a preponderance of

the evidence shows that a concert of action exists among persons to unlawfully detain the Plaintiff without her consent and that the action is in furtherance of a common plan to commit a wrongful act and that the persons so acting had knowledge of the plan and its unlawful purpose. It is not necessary that a person join the plan at the time of its inception. Every one who enters into such a common plan is in law a party to every act previously or subsequently done by any of the other persons in pursuance of it.

The agreement between persons need not be proven by direct evidence but may be shown by circumstantial evidence that tends to show a common intent. The ultimate fact of such a plan is determined from those inferences which are natural and properly drawn from those matters directly proved.

In an action for damages for false imprisonment resulting from the acts of such persons, the major significance of a plant lies in the fact that it renders the Defendant liable for all the damages ensuing from the unlawful imprisonment irrespective of whether or not the specific individual personally caused such imprisonment, and regardless of the specific individual's degree of activity of participation in the commission of the alleged wrongful act of false imprisonment.

Therefore, if you find that the Beverly Hills Police Officers, Bolander and Devich, unlawfully detained Plaintiff in a common plan with the Defendant, Saks Fifth Avenue, to collect the bill owing the

Defendant, Saks Fifth Avenue or wrongfully detained the Plaintiff until the alleged amount due was paid, the Plaintiff may recover from the Defendant Saks Fifth Avenue, for all the damages resulting from acts of the individual conspirators.

Requested by Plaintiff
Refused
Rhone, Judge."

Plaintiff's Special Jury Instruction No. 24

- See, Reporter's Transcript page 571 -

Requested by Plaintiff
Refused
Rhone, Judge."

E. PLAINTIFF WRONGFULLY CHARGED TO ASSUME BURDEN OF PROOF, CONSPIRACY/ARREST WITHOUT WARRANT, SEARCH AND SEIZURE WITHOUT WARRANT, IMPRISONMENT FOR DEBT, TRIAL BY KANGAROO COURT AT POLICE STATION, NO DUE PROCESS OF LAW, FORCED PAYMENT AT POLICE STATION BEFORE RELEASE. - THESE ARE SUBSTANTIAL FEDERAL QUESTIONS - PRESENTED BY THIS APPEAL

Burden of Proof: - The Trial Court's failure to instruct the jury as to which set of facts of which there was evidence in the record, if any, constituted probable cause for an arrest was particularly prejudicial to interests of the Plaintiff in that the burden of proof is

on the Defendant to prove justification for an arrest, when arrest without warrant is pleaded. The jury had to make up its own mind as to what kind of evidence constituted probable cause to make an arrest, and then to determine that issue of law (properly to be determined by the court) in light of the court's instruction, above mentioned, that the burden in all respects was on the Plaintiff. (R.T., Pages 537-538) To force the Plaintiff to assume the burden of proof, was not due process of law. Therefore, is in violation of due process clause of the Fourteenth Amendment of the United States Constitution.

Watkins v. Oakland Jockey Club,
86 F.Supp. 1006, affirmed
183 F.2d. 440

New York Life Ins. Co. v. Rogers,
126 F.2d. 784

Riegel v. Hygrade Seed Co., Inc.,
47 F.Supp. 290

Probable Cause: - When a person has been detained and that detention is not for the investigation of a offense believed to have been committed at the time, then there is no defense of probable cause available to the defendant. This point was clearly established in the case of Moffatt v. Buffums, Inc., 21 Cal.App.2d 371.

In the instant case, it is shown beyond any doubt that Plaintiff-Appellant was not being detained for investigation on any grounds that she was stealing the property of another, or of any crime

suspected, but on the contrary, was detained for the sole purpose of forcing the payment of money owed for prior purchases. Therefore, is in violation of Title 18, Section 241, United States Code, Chapter 13, Civil Rights, - conspiracy or concerted action, against rights of citizens.

Also, in violation of Due Process Clause of The Fourteenth Amendment of the United States Constitution.

Due Process of Law: Conduct and false charges of the Appellee before the Appeal Court, and the State Supreme Court of California -- Appellee knowingly and intentionally violated Appeal Rules and Due-Process-of-Law, by submitting documents to the Appeal Court without serving such copies on the Appellant.

This document, dated October 26, 1968, made false charges of forgery that Appellant applied Attorney Ward Sullivan's name to briefs which Appellee charged were prepared by George Lopo, and false charges that Sylvia Lopo was a self-appointed attorney therefore not properly before that court. These charges, even if true (but definately not), could not then be raised for the first time, and then to deliberately proceed to withhold notice from Appellant until the Supreme Court made its decision, based on such false information, of which the Appellant had no knowledge, or opportunity to answer such charges. For Appellant to be falsely charged and tried without her knowledge of such charges, is not Due-Process-of-Law. Therefore is in violation of the Due Process Clause of the Fourteenth Amendment of the United States

Constitution.

Appellant's failure to receive or learn of Defendant-Appellee's document, dated October 26, 1968, is unconstitutional.

Armstrong v. Manzo, 85 S.Ct. 1187 (1965), 380 U.S. 545

Appellant's Unlawful Arrest and Imprisonment For Debt, is a violation of her Constitutional Rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, Section I, Clause 2: "---nor shall any State deprive any person of---liberty, or property, without due process of law."

Constitutional Law: "Fourth Amendment prohibition against unreasonable search and seizure is enforceable against the states through the Fourteenth Amendment.

U.S.C.A. Const. Amends. 4, 14."

Camara v. Municipal Court, 87 S.Ct. 1727 (1967), 387 U.S. 523.

Search and Seizures: - Appellant's rights under the Fourth Amendement which protects people--and not simply "areas"--against unreasonable search and seizure.-

"While it is well settled that upon a valid arrest a search of the person may be lawfully made and any evidence found thereon tending to establish the commission of a crime may be lawfully seized, nevertheless, if the arrest is unlawful the incidental search in connection therewith

is likewise unlawful and in violation of the constitutional rights of the person."

Weeks v. United States, 232 U.S. 383, 58 L.Ed. 652, 34 Sup. Ct. 341, L.R.A. 1915B, 834, Ann. Cas. 1915C, 1177.

Search and Seizures: - "Fourth Amendment protects people, not places. U.S.C.A. Const. Amend. 4.

Search and Seizures: - Fourth Amendment protects people, not simply areas, against unreasonable search and seizure. U.S.C.A. Const. Amend. 4.

Search and Seizure: - Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures. U.S.C.A. Const. Amend. 4."

Katz v. United States, 88 S.Ct. 507 (1967), 389 U.S. 347.

The trial record substantiates that this was an unlawful arrest, without warrant, therefore an unlawful and "unreasonable" search and seizure without warrant, and that Appellee used the fruits (money) of the seizure for his own gain.

The trial record also substantiates, beyond all doubt, that Appellant suffered severe punishment and injuries inflicted upon her person by the false imprisonment, arrest, and physical assault during the unlawful and unreasonably search and seizure acts.

"We are here concerned with allegations

which squarely and indisputably involve state action in direct violation of the mandate of the Fourteenth Amendment--that no state shall deprive any person of life or liberty without due process of law. This is a direct, traditional concern of the Federal Government. It is an area in which the federal interest has existed for at least a century, and in which federal participation has intensified as part of a renewed emphasis upon civil rights."

United States v. Price, 86 S.Ct. 1152 (1966), 383 U.S. 787, 16 L.Ed.2d 267.

State-Court-Invalidation of Federal Law is involved in this instant case. All issues violate Constitutional Rights of Appellant, as are consistently and forcefully argued herein. And as presented in all of Appellant's State Court Briefs.

V

STATE COURT BRIEFS

A. APPELLANT'S OPENING BRIEF

Plaintiff's Special Jury Instruction No. 18 (page 28):

"You are further instructed that the right of personal liberty is guaranteed to every person by the Constitution of the United States, by the Constitution of the State of California, and by virtue of the law of the land.*** ***If you find that the Plaintiff was detained either as a result of the act of Mr. Mathis or Mr.

Plotnick in themselves wrongfully violating the personal liberty of the Plaintiff or as a result of the unlawful act of the Police Officers, as agents for Saks Fifth Avenue or authorized, encouraged, directed, procured or assisted in by Mr. Plotnick or Mr. Mathis and such detention was without legal justification.***"

This instruction embodied all the guarantees of the United States Constitutional Amendments, Five, Fourteenth Amend. Section I, and United States Code §241. Conspiracy.

However, all of the foregoing instruction was stricken out by the trial court, and when any mention was made as to the unlawful violation of Plaintiff's Constitutional Rights, in any modified instructions, that portion of the instruction was stricken out.

Also, see: Calls For Police, page 17. - Arrested For Forgery, page 8. - Taken To Police Station, page 9. - Placed Her Under Arrest Because of Information Given By Plotnick, page 25. - Collected Account From Her at Police Station, page 20.

B. APPELLANT'S REPLY BRIEF

Page 17; "Respondent had no reason whatsoever to suspect Appellant of the commission of a crime, but it was solely for the purpose of collecting a delinquent account and constituted a violation of her rights against imprisonment for debt under the provisions of Article I, Sec. 15 of the Constitution of the State of California."

(1) IMPRISONMENT FOR DEBT, ARTICLE I, SECTION 15

"No person shall be imprisoned for debt in any Civil Action, or means or final process, unless in cases of fraud, nor in civil actions for torts, except in cases of wilful injury to persons or property; and no person shall be imprisoned for a militia fine in time of peace."

Imprisonment for debt under Article I, Section 15 of the State of California, is also a violation of United States Constitutional Rights under the Fifth Amendment.

Also, under Section I, of the Fourteenth Amendment of Due Process of Law.

Also, under Equal Protection of the Laws.

C. APPELLANT'S PETITION FOR REHEARING

Violation of Constitutional Rights, page 31

"The Appellant, Mrs. Helen Lopo, was deprived of her Constitutional Rights under the Fourth (4th), Fifth (5th), and Sixth (6th) Amendments to the Consitution of the United States of America."

Amendment 4

"Appellant was deprived of her right to be secure in her person, and effects-- and was held under false imprisonment, to force collection of a debt, and no warrant

issued."

Amendment 5

"Appellant was deprived of her liberty and property, without due process of law."

Amendment 6

"Appellant was held under threat and duress, and denied the right to have counsel (see R.T., page 251, line 13 to line 18)."

"The Appellant, Mrs. Helen Lopo, was also deprived of her Constitutional Rights under Article I, Section 3--Article I, Section 15--Article I, Section 19--Article I, Section 22, of the Constitution of California."

Also page 37:

(1) "Being wrongfully and illegally detained by the Defendant, Saks Fifth Avenue; that no crime had been committed at the time or prior to the detention, and that Defendant had no probable cause to believe that Plaintiff had committed a crime; and,

(2) Being falsely arrested by the Beverly Hills Police Officers in conjunction with, aided and abetted by and in conspiracy with the agents and employees of Saks Fifth Avenue."

Also, see page 22: "Now, Mrs. Lopo has been falsely imprisoned, arrested on suspicion of forgery, physically assaulted

(R.T., Page 263, line 1 to Page 264, line 26), also (R.T., Page 396, lines 23-26), browbeaten, and forced to pay a debt, while so held under threat and duress. She was told to:--Pay Saks and we will let you go--or would you rather be locked up?--Pay Saks or we will book, fingerprint and put you in jail. And Mrs. Lopo under these threats and duress, begged, no, please don't do that." (R.T., Page 250, lines 1-22.)

D. DISTRICT COURT OF APPEAL REFUSED TO SUPPORT AND DEFEND THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF CALIFORNIA

"3--Constitutional Obligations

It is the duty of all justices and judges of the Courts of California to support and defend the Constitution of the United States and the Constitution of California; in so doing, they shall fearlessly observe and apply fundamental limitations and guarantees."

California Rules of Court:
Appendix - Division II

Page 2. Appellant's Petition For Rehearing further states: "The court has yet to decide on legal issues such as, the trial court's instruction No. 21, that charged the jury that the general burden of proof was on the Plaintiff. This is in error as stated by points and authorities submitted by Plaintiff.

Search and Seizure, without warrant, unlawful and illegal use of money.

Violation of Mrs. Lopo's Constitutional Rights.

All other issues of material facts as contained in this petition."

STATEMENT OF THE CASE

It is indeed shocking to find that an occurrence such as this could really happen. When, as an invitee of Appellee, and while shopping in Appellee's store in Beverly Hills, Appellee illegally, and unlawfully, and without reasonable or probable cause, imprisoned the Appellant, and caused her to be arrested and taken to the police station on a false charge of forgery for the purpose of collecting money due Appellee from Appellant upon her open book, or charge account.

When Mrs. Lopo and her daughter, were grabbed by the arm and forced to go to the upstairs office of Saks, she told them that she was Mrs. Lopo and that they could verify this by her signature on the sales slips that she had just signed, and that they could compare this with her account signature (R.T., Page 224, line 1 to line 26). As this was a signature account, they had no charge-a-plate system. However, their reply was that her account was deliquent, they threw a check book in front of her, telling her to write a check and pay her bill. She said she couldn't as she had no checking account, but would have her husband put a check in the mail

over the weekend. This did not satisfy Mr. Plotnick and he continued to demand that she pay her bill (R.T., page 394, line 23 to page 395, line 16).

From the time that Appellee first apprehended the Appellant at its store, until her departure to the police station, the Appellee made six (6) hotly pressed specific demands on Mrs. Lopo that she pay her accured bill.

The arrest was without issue of a warrant, from the testimony of the arresting officer, Mr. Devich, we find that when he contacted Mr. Plotnick at Saks, that they stepped out into the hall and with just the two of them present, that from his discussion, is why he placed Mrs. Lopo under arrest. (R.T., page 464, line 25 to page 465, line 4.)

Now, Mrs. Lopo has been falsely imprisoned, arrested for forgery, physically assaulted, (R.T., page 263, line 1 to page 264, line 26) also (R.T., page 396, lines 23-26) browbeaten, and forced to pay a debt, while so held under threat and duress. She was told to:-- Pay Saks and we will let you go--or would you rather be locked up?--Pay Saks or we will book, fingerprint and put you in jail. And Mrs. Lopo under these threats and duress, begged, "No, please don't do that" (R.T., page 250, lines 1-22).

The Appellee took Mrs. Lopo's ledger card to the police station, knowing that the lady he had under arrest was Mrs. Lopo. Now at the police station, "Prior"

to the collection of the bill, the Appellee did not produce, receive, or even attempt to acquire any identification on the Appellant whatsoever. (R.T., page 419, lines 1-7.)

But Appellee did demand and force collection of the bill at the police station and gave the lady a receipt made out to Mrs. Lopo, thereby acknowledging her to be Mrs. Lopo. It should also be noted that Mrs. Lopo did not have possession of her purse, for it was only when Appellee handed her a receipt for the sum of $574.93, that they gave her the purse.

The District Court's Opinion page 7, quotes verbatim, Respondent's Brief one full page of slanderous, degrading remarks about Mrs. Lopo being an "unkempt individual" and "to cap it off, she is accompanied by a 'guardhouse lawyer'" referring to Starkie Lopo her daughter.--Most of this page quote is not contained in the trial transcript, but is the low level, slanderous remarks of the Respondent.

For the Honorable District Court to become a party of such remarks, then to order that its Opinion is not for publication, is not in keeping with the Cannons of Judicial Ethics.

SUBSTANTIALITY OF FEDERAL QUESTIONS

The questions raised in this case are without doubt the most vital Due Process, and Civil Rights issues encompassed in the United States Constitution. They reach the very core of our lives as free people. They, by constitutional guarantees, abolish imprisonment to force payment of a private debt.

For if this procedure to force collection of a debt is condoned, it means that any person in the United States, who becomes a debtor, is subject to seizure and imprisonment and physical assault to force payment of such debt.

I, do not believe that this Court can sanction the procedure under which a person is illegally seized, held and tried by a kangaroo court of conspirators (of no authority) at the police station, then forced to buy his freedom.

The right of a creditor to collect for an outstanding account is governed by rules of Civil Law and does not, under any stretch of the imagination, justify the false arrest and imprisonment of a person to accomplish that end.

I believe that the discussion above, demonstrates that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral arguments, for their resolution.

CONCLUSION

For the foregoing reasons, jurisdiction should be granted. Appellee's Motion to Dismiss is completely without foundation and should be denied. Appellant's appeal was timely, in conformity to the statute, and is within the jurisdiction of this Court.

Appellant has properly prosecuted her appeal which presents very weighty and substantial federal questions resting at the

very pedestal of our United States Constitution. Appellant's appeal raises vital issues which formed the very basis from which grew the need for the Constitution of the United States.

WHEREFORE, Appellant respectfully submits that this Court grant jurisdiction.

Respectfully submitted,

HELEN LOPO, by her
Guardian Ad Litem,
SYLVIA TINA LOPO

In Propria Persons for
Petitioner-Appellant.

IN THE
SUPREME COURT OF THE
UNITED STATES

October Term, 1968

No. 1257

HELEN LOPO, by her Guardian
Ad Litem, SYLVIA TINA LOPO,

Plaintiff and Appellant,

vs.

SAKS FIFTH AVENUE, a New York
Corporation,

Defendant and Appellee.

CERTIFICATE OF COUNSEL

I, SYLVIA TINA LOPO, Guardian Ad Litem for Helen Lopo, In Propria Persona hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

That Appellant Helen Lopo is not appealing to this Court from a conviction, or from an act where she harmed society and would seek to use this Court for escape. She is appealing to this Honorable Court for protection with respect to rights and privileges secured and guaranteed to her by the Constitution and laws of the land of her birth. Appellant Helen Lopo was the victim of a conspiracy.

That the foregoing Petition is restricted to the following grounds:

(1) That there has been intervening decisions by this Court of the same or similar issues, (2) That the state court avoided deciding federal questions in this instant case by putting forth nonfederal grounds of decision without fair or substantial support, and adopted its view in order to evade a Constitutional Issue, and thus to defeat jurisdiction of the United States Supreme Court, and (3) That Petitioner-Appellant did advance an important argument, and cited additional cases in support of her argument, in her Supplement To Jurisdictional Statement and Reply to Appellee's Motion To Dismiss.-- However, it reached this Court too late to be considered. Therefore, Appellant is re-submitting her argument.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 1969, at Los Angeles, California.

SYLVIA TINA LOPO
In Propria Persona for
Plaintiff-Appellant.

G. E. BISHEL, CHIEF DEPUTY

DEPUTIES

JOSEPH M. ROGERS
KEITH M. HAWKES
REMO C. MATTEOLI
MARK F. THOMPSON
SAN FRANCISCO

DAVID BLOMGREN
ROBERT F. JOHNSON,
LOS ANGELES

A. F. BRADOVICH
SACRAMENTO

SAN FRANCISCO 94102
4250 STATE BUILDING

LOS ANGELES 90012
1008 STATE BUILDING

SACRAMENTO 95814
108 LIBRARY AND COURTS BUILDING

OFFICE OF THE CLERK

Supreme Court of California

WILLIAM I. SULLIVAN, CLERK

San Francisco, California
5 March 1969

Mrs. Sylvia Tina Lopo
16366 Royal Hills Drive
Encino, Calif. 91316

Re: 2 Civ. 31906 - Lopo v. Saks

Dear Mrs. Lopo:

Your recent letter addressed to the Chief Justice has been directed to this office for answer.

The record in the above case discloses that the judgment of the Court of Appeal was final on December 10, 1968 and on that date the remittitur was issued to the county clerk. The case is no longer pending in the appellate courts of the state and the Supreme Court is without jurisdiction to entertain or consider the case.

We return the documents which accompanied your letter.

Very truly yours,

William I. Sullivan
Clerk of the Supreme Court

By: G. E. Bishel
G. E. Bishel, Chief Deputy

GEB:kt
Enc.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, say:

I am and was at all times herein mentioned a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that my business address is 608 South Hill Street, Los Angeles, California 90014.

That on June 13, 1969, I served the within PETITION FOR REHEARING OF DECISION NO. 1257 DECIDED ON MAY 26, 1969 AND CERTIFICATE OF COUNSEL, upon the DEFENDANT in said cause, by depositing one copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, in a mail box regularly maintained by the Government of the United States at Los Angeles, California, addressed to the attorneys of record for said Defendant at their office addresses as follows:

Bolton, Groff & Dunne
210 West 7th Street
Los Angeles, Calif.

Edward L. Lascher
2497 Harbor Blvd.
Ventura, Calif.

United States Supreme Court
Office of Clerk
1 First Street North East
Washington, D.C.

Executed on June 13, 1969, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

_____

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

LOPO *v.* SAKS FIFTH AVENUE.

APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT.

No. 1257. Decided May 26, 1969.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.